

A  
D I G E S T  
OF  
H I N D U L A W  
ON  
CONTRACTS AND SUCCESSIONS;  
WITH A COMMENTARY  
BY  
*JAGANNÁTHA TERCAPANCHÁNANA:*  
TRANSLATED FROM THE  
ORIGINAL SANSKRIT.  
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## BOOK II.

*ON DEPOSITS, SALE WITHOUT OWNERSHIP, CONCERNS AMONG PARTNERS, AND SUBTRACTION OF WHAT HAS BEEN GIVEN.*

### CHAPTER I.

*ON DEPOSITS AND OTHER BAILMENTS.*

#### SECTION I.

*ON THE SEVERAL SORTS OF BAILMENT.*

##### I.

**V**RIHASPATI:—UNDER the title of loans and payment, the law has been declared, from the delivery of the loan and so forth, to the recovery of the debt: now hear the complete rules for deposits and other bailments.

“DELIVERY” or advance; delivery to a borrower asking a loan in these words, “lend me money:” of course *it means* the delivery of money *thus* becoming a loan. Beginning with this and ending with compulsory payment, that is, with the recovery of the debt, the title of law, called loans and payment, has been promulged. The proper order of the subject is thus intimated, for MENU, enumerating the eighteen titles of law, has first

mentioned loans, and next deposits: the pupil, therefore, is first required to study the law of loans, and next that of deposits, because it is next in order.

## II.

MENU:—OF those *titles*, the first is debt on loans for consumption; the second, deposits, and loans for use; the third, sale without ownership; the fourth, concerns among partners; the fifth, subtraction of what has been given;

2. The sixth, nonpayment of wages or hire; the seventh, nonperformance of agreement; the eighth, rescission of sale and purchase; the ninth, disputes between master and servant;

3. The tenth, contests on boundaries; the eleventh, assault and slander; the twelfth, larceny; the thirteenth, robbery and other violence; the fourteenth, adultery;

4. The fifteenth, altercation between man and wife, and their several duties; the sixteenth, the law of inheritance; the seventeenth and eighteenth, gaming with dice and with living creatures: these eighteen titles of law are settled as the groundwork of all judicial procedure in this world.

AMONG these eighteen titles of law, that of loans and payment is first discussed in this work. Its definition has been propounded by NA'REDA (Book I, v. I). Bailment, consisting in the intrusting of one's own property with another person; sale made by one, who is not owner of the effects sold; the mode of proceeding among associated traders and the like; the resumption of effects given away, believing of the donee an improper object of donation, or through anger, or the like; nonpayment of wages, or of the hire of a servant or labourer; breach of contract; rescission of purchase, and rescission of sale; disputes between master and herdsman; contests on the boundaries of towns and the like; slander, or contumelious invective

tive and so forth; assault, or battery and similar injuries; larceny, or private stealing; robbery, or violent seizure of property: adultery, or intercourse of a woman with a man other *than her husband*; duties of a husband with his wife; distribution of the paternal estate or the like; "gaming with dice," that is, play; "gaming with living creatures," or fights of birds, rams, and other living creatures: these eighteen titles of law are the groundwork of judicial procedure. Challenges, or gaming with living creatures, being distinguished from other modes of gaming, the number of eighteen is completed.

CULLU'CABHATTA.

LOANS have been discussed; sale without ownership shall be subsequently considered. What is ordained, is a "precept or rule" which must be fulfilled (1). Consequently the meaning of the phrase (1) is, 'hear, that is, attend to, what is to be done in respect of bailments; namely the form of making a deposit, and so forth, unto the form of receiving it.' NA'REDA defines a deposit.

### III.

NA'REDA:—WHEN a man bails any of his effects to another, in whom he has confidence, and from whom he has no doubt of receiving his property again, it is a deposit, which the wise call *nibhshépa*.

"WHERE" is here employed in the sense of when; one suffix being substituted for another. Or else, "where" has the termination of the seventh case denoting subject; consequently that, in respect of which the agent, entertaining no doubts of receiving his property again, performs acts which make it a deposit, or an act amounting to bailment, is a deposit: or the settled rule concerning deposits is a title of judicial procedure.

Is the sense of the word grounded jointly on its use and derivation, or on its acceptation only? The latter is intimated by CULLU'CABHATTA who thus explains the word, 'the intrusting of one's own property to another person:' and the author of the *Mitācsharā* says, '*nibhshépa* is the committing of property



property to *another* in *his* presence ' According to this opinion, it has a secondary sense, namely that of *the thing* deposited, in the expression " *mal e a deposit \**" (XI) for a derivative of this form may be admitted in a passive sense When a man bails his own property, it is a bailment of his own property, or the property is a bailment According to the opinion, wherein it is maintained, that the word means the thing bailed, the sense is the same in both texts herein many authors concur Consequently *nibhshpa* denotes generally both the delivery of a man's own effects to another without annulling his own property in them, and the effects so delivered.

"In whom he has confidence," is mentioned descriptively, and not as denoted by the term, for a man will not intrust his property to another without confidence in him "Any of his effects," any of the effects in his power therefore, when the king commits contested property to another person, it is a deposit

Does not the sense ascribed to *nibhshpa* comprehend a pledge, or the delivery of a pledge? It may be so a deposit does arise in a pledge and the like. But, when it is questioned whether a deposit or a pledge shall prevail, deposit, different from a pledge, is intended, in like manner as one name of kind may denote cattle of that sort, and a synonymous term in the same sentence may intend cows only or the objection may be removed by saying "without contracting his own dominion over them," instead of saying, "with out annulling his own property in them"

UPANID'HI is a distinct sort of deposit, of which CULLUCABHATTA says, it is a distinction similar to that of religious mendicant and *Brahmana* what the distinction is, YAJNYAWALCYA declares

#### IV

YAJNYAWALCYA.—A THING, enclosed *under seal* in a box or casket, which the owner delivers into the hand of another, without mentioning *its kind, form, or quantity*, is cal-

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\* Literally \* bail a deposit

led an *upanid'hi*, and must be restored in the same condition.

A BOX, casket, or other thing containing that, which is to be bailed; a thing contained therein under seal, which the owner with confidence delivers into the hands of another for safe custody, without mentioning its kind, form, quantity, or the like, is called an *upanid'bi*. The *Mitácshará*.

“ A BOX,” or vessel with a lid and so forth, containing the thing bailed. The *Retndcara*.

‘ THE thing bailed’ signifies the thing which becomes a deposit.

“ THAT, which the owner so delivers :” ‘ thing’ must be supplied as the subject, to which the word “ that” is joined adjectively. “ A box or casket ;” a closed vessel or the like containing the deposit.

The *Dīpatalicá*.

THE word ‘ deposit’ is there considered as signifying the chattel bailed. BHAVADEVÁ cites the *Sárja*,\* ‘ A certain vessel is called box or casket.’ “ Such a deposit is called *upanid'bi* ;” for a bailment under seal is a deposit. Open and sealed deposits are similar, being bailments. So JATA'D'HARA. From *upanid'bi* is derived *aupanid'bica*, the word used in the text ; and it signifies belonging to a sealed deposit.

## V.

NA'REDA, cited in the *Mitácshará* .—WHEN a thing is deposited, under seal, without mentioning its quantity ; if its kind and form be unknown, it is considered as an *upanid'hi* : but the wife call a specified deposit *nihcshépa*.

“ If its kind and form be unknown ;” if the depositary know not whether it be gold, or silver, or what. “ Under seal ;” secured by a private knot to pre-

\* A dictionary so called.

vent its being taken by another person, or secured by the impression of a seal on which particular letters are engraved; when a thing is so deposited, the bailment of it is *upanid'bi*. A specified deposit (or the bailment of a thing, of which the quantity, kind and form are mentioned,) the wise call *nibcshépa*; and the construction is the same, if deposit be referred to the thing deposited.

SINCE the text of NA'REDA clearly shows a distinction between open and sealed deposits, the distinction should be called evident: why does CULLU'-CABHATTA compare this distinction to that between *Bráhmāna* and mendicant? In the text of CA'TYA'YANA (XXXII), sealed deposit is comprehended in the word *nibcshépa*; and NA'REDA, after premising the general sense of this term, propounds a distinction in a subsequent text: consequently it has both a general and a particular sense, as twice-born denotes the *Bráhmāna*, *Cshatriya* and *Vaisya* collectively, and also the *Bráhmāna* separately: and further, VRĪHASPATI premising *nibcshépa* (1) explains *nyāsa* separately from it, but not separately from sealed deposits.

## VI.

VRĪHASPATI:—WHEN any thing is carried and placed in the house or on the ground of another, notice being given to him by the owner, who has fear of the king or of robbers and the like, or who wishes to deceive his heirs, it is called *nyāsa*.

ACCORDING to the gloss of CHANDE'SWARA. " Notice being given to him," is supplied in the text to exclude a thing deposited without the depositor's knowledge: there is no fault on his part, if a thing, deposited without his knowledge, be lost. Why should a man place any of his own effects on another's ground? The text assigns a motive, " fear of the king" &c.

IF it be said, this is the meaning of *nyāsa*, not of *upanid'bi*; the answer is, in the verse immediately following he mentions what is in fact denoted by the last mentioned term.

## VII.

VRĪHASPATI:—And when a thing, enclosed in a box, is placed without

without mentioning its kind, form or quantity, and without showing the thing.

“ *Placed* ” is brought forward from the preceding text: it follows, that this describes *nyāsa*, for no other name is mentioned. Consequently, *nyāsa*, like *nibhṣhēpa*, has both a general, and a particular sense. So, in the text of MENU (XL), *nyāsa* comprehends both open and sealed deposits; and it is constantly used by VRĪHASPATI in describing a depositary. According to the *Mitācsharā* and the rest, *nyāsa* is the delivery of a thing into the hands of a person belonging to the depositary’s family, with these directions; “ give this to your master: ” and such a delivery occurs both in the case of open, and of sealed deposits; but VRĪHASPATI has expressly declared it in the case of open deposits.

### VIII.

CA’TYA’YANA :—A COMMODITY sold, the deposit of one who is absent, a pledge, a bailment for delivery (*anvāhita*), a loan for use (*yāchita*), and a deposit for commerce, are considered as *upanid’his*.

“ A COMMODITY sold,” but for some cause remaining with the vender: so the text is expounded in the *Retnācara*. We hold, that the word, taken in a passive sense, means the commodity *fold*; but, if taken in a causal sense, it will intend *the price* of the commodity. “ The deposit of one who is absent; ” explained in the *Retnācara*, a thing deposited by one, who is gone to a foreign country. The meaning is, that a thing, which a man, who has gone abroad, but considering the delay of his return, sends home by a messenger or a friend, is the deposit of one who is absent. MISRA and BHAVADEVĀ explain it, a bailment by another, while the owner is absent in a foreign country. The *Mitācsharā* contains this gloss: ‘ When a thing is delivered into the hands of some person, and he subsequently delivers it into the hands of another, with these directions, “ give this to the owner,” it is a bailment for delivery.’ The *Dīpacalcā* concurs in this explanation: and CHANDE’SWARA holds, that a thing which had been committed to some person, and which is bailed by him to another, with these directions, “ you will deliver this to such a

man,

man, the owner," is a bailment for delivery. The difference between the two opinions consists in the intervention of one or two persons, and the exposition is founded on the following text:

## IX

CA'TYA YANA —WHEN a thing is bailed with these directions; "deliver this, as by my desire, to such a man, when he shall demand it for his own business," it is called *anwadhi*.

WHAT is bailed with these directions, "deliver this to another, other than myself and different from the owner," is *anwadhi*.

The *Mitacshara* and others

"DELIVER this to the owner, must be supplied, what is bailed with these directions, deliver this to another, other than myself, *but who is* "the owner," is *anwadhi*.

The *Retnacara*.

BOTH senses may be received, or even if the text be limited to one sense, the other may be assumed from the expression, "and the like," in the text of YA'JNYAWALKYA (X). A pledge transferred, as mentioned by MISRA and BHAVADEVA, must also be included. A pledge received from another person, and delivered as a pawn to a creditor on receiving a loan from him, is named a pledge transferred. We do not find, whence the author of the *Mitacshara* has said, in explaining *nyasa*, that the difference consists in the delivery of the thing into the hands of a person belonging to the depositary's family for the difference is, that *nyasa* supposes one person, but a bailment for delivery supposes two.

How has CHANDESWARA distinguished *nyasa*, *nibeshana*, and *anwadhi*? It cannot be said, that he holds *nyasa* and *anwadhi* to be the same, for that exposition could not apply to the text of YA'JNYAWALKYA, where both are separately mentioned.

## X

YA'JNYAWALKYA.—THIS is the rule respecting a loan for use (*yacita*),

(*yāchita*), a deposit for delivery (*anwāhita*), a deposit unspecified (*nyāsa*), and an open bailment (*nihcshēpa*), and the like.

“ WHEN he shall demand it for his own business” (IX) By this expression is meant, that, if any person require a thing, and it be sent by a messenger, it is *anwāhita*. Some hold, because the word “ owner” is constantly employed in the *Mitācsharā* and other works, that the distinction is as follows : effects and the like, previously deposited, which are delivered to the owner, through the medium of another person, are *anwāhita*, and what is bailed by the owner, through the medium of another, is *nyāsa*. But the word “ owner” is not found in the text of any sage, to ground upon it the opinion of these authors. HELA YUDHA, reading “ when he shall demand it for this purpose,” thus expounds the text : “ when a thing is bailed with these directions, “ deliver this to such a man, when he shall demand it for this purpose,” it is called a deposit for delivery (*anwādhi*).” The meaning is, that, if some person, to oblige another, intrust any chattel employed at nuptials to some other person, with these directions, “ when DE’VADATTA requires this to use it at nuptials or the like, deliver it to him,” that chattel is a deposit for delivery (*anwādhi*). Or, if a man himself, or by a messenger, demand payment of a debt, and the debtor, after two or three days, deliver the amount of it to some other person, it is a deposit for delivery (*anwādhi*). According to CULLU CABHATTA and others, the word *anwādhi* is either in a secondary sense, or is derived in a passive form. According to others, it is derived in a passive form, with a sense founded jointly on use and derivation.

‘ CLOTHES, ornaments and the like requested, and obtained, for a marriage or other occasion of rejoicing, are loans for use’ (VIII).

THE *Mitācsharā*.

IN THIS CHANDE’SWARA and ‘SŪTAPĀNI concur. The *Dīpācalikā* expresses, “ they are considered as *upanidhi*” (VIII), which is called *nyāsa* by VRĪHASPATI. The meaning is, whatever are the rules in regard to a sealed deposit, from the delivery to the recovery of it, the same are to be admitted in these cases. This is expressly declared in the text quoted

from YAJÑYAWALKYA ( X ): and it is directed by a text, which stands near the definition above quoted.

# XI.

NA'REDA:—THIS very law is enacted in the case of loans for use, deposits for delivery and the like, bailments with an artist, sealed deposits, bailments in the form called *nyāsa*, and mutual trusts.

2. If a man privately receive a fine, or a valuable chattel, the law is the same in that case: these are declared to be the six sorts of deposit.

LOANS for use, and deposits for delivery ( *anyābhitā* ) have been explained. “ And the like,” comprehends commodities sold and so forth. “ Bailments with an artist” explained in the *Retnācara*, things committed to an artist for ornaments and the like; and in the *Mitācśharā*, gold or similar materials delivered into the hands of a goldsmith or other artist to be worked into a necklace or other ornament. These are comprehended under the words, “ and the like,” in the text of YAJÑYAWALKYA ( X ). “ Sealed deposits,” ( *upanid'hi* ), already explained. “ *Nyāsa*,” according to VIJNYA'NEŚWARA and CHANDEŚWARA, signifies effects not shown to the owner of the house, but delivered in his absence to a person belonging to the house. According to CHANDEŚWARA, the *nyāsa* mentioned by VRĪHASPATI is a form of *nibh-slēpa*, and different from this. So many are the sorts of deposit ( *nibh-slēpa* ), says CHANDEŚWARA; for NA'REDA employs this term in a general sense.

CHANDEŚWARA says, when a man privately receives a fine, as there is no evidence of his levying the fine, this very rule is applicable; and also when a man privately receives a valuable chattel, since there is no evidence of the receipt. Consequently, if a man, to expiate a very infamous crime accidentally committed, pay a private fine to the king, through a publick officer, and that officer, acting fraudulently, deny the payment of the fine; or if the king's officer assert that a fine has been paid, though none have been exacted; this very rule is applicable, namely the rule declared for deposits: and, if a man privately

privately receive back a loan, a deposit, or the like, which he had himself given, and subsequently deny the receipt; in that case also, this very rule is applicable. It is asked what rule? The want of evidence being mentioned, it follows, that other proof must be sought: therefore, as ordeal is admitted, when proof is sought of a deposit and the like, so, in this case, *ordeal is also admitted*. Such is CHANDÉSWARA's meaning. But it must be here considered, that ordeal is not mentioned in the text of NA' REDA, and is not intimated by the words "this law." Others say; the words ("the law is the same in the case of fines &c.") intend the delivery on demand and so forth.

HELA'YUDHA reads, if a man receive a *pógenda* or adolescent; consequently, according to him, the law, respecting an infant received with valuable effects, is the same with that respecting deposits: it will be mentioned; and the whole of the law, declared under the head of deposits, must be understood. A deposit may occur in regard to an infant. Thus a child, whose father and mother are deceased, is bailed by the king, or his officer, or by the child's maternal uncle; in this, and in other cases, a deposit arises.

"How is the law of deposit (*nibeshépa*) extended by the sage to mediate and unspecified deposits (*nyàsa*), since what is denoted by *nibeshépa*, is found in *nyàsa* and the rest?\*" CHANDÉSWARA reconciles it thus; "some distinction may be supposed." The distinction is mentioned by CULLŪCABHATTAR; "like that between *Bráhmāna* and mendicant." Or peculiarities, different from those of *nyàsa* and the like, may be supposed in the definition of *nibeshépa*: such as, delivered before witnesses; different from bailments with artists; or the like. There are only six sorts of deposits; for, in judicial procedure, *nyàsa* extends to the mere delivery of a chattel for safe custody; and loans for use and deposits for delivery are held one sort; and whatever is included in the words "and the like," is also considered as a single sort of deposit; and the receipt of a fine, or of a valuable chattel, is also admitted as a single sort of bailment. This is the method of the ancients: but according to the author of the *Mitácshará*, who admits the separation of loans for

\* And therefore, what in its nature belongs to them, is not extended to them.



use, deposits for delivery and the like, a mediate and unspecified deposit (*nyāsa*) and mutual trusts (*pratinyāsa*) must be considered as a single sort of bailment. A mutual trust may thus arise, according to the author of the *Mitācsharā*; “let your jewels or the like remain with me, who reside in a secure place; and let my copper vessels and similar effects, which are coveted by my heirs, remain with you;” on such an agreement, the effects are mutually bailed. In some cases, mutual deposits are made in the form of a sealed bailment; and in the case mentioned, a mutual deposit arises in the form of an open bailment, not a mutual deposit in the form of a mediate bailment (*nyāsa*): for the author of the *Mitācsharā* holds *nyāsa* to be a delivery into the hand of a person belonging to the house. But there is no difficulty, for the word *pratinyāsa* comprehends mutual deposits in other forms.

## XII.

VRĪHASPATI:—If a contest arise concerning a deposit privately made, proof by ordeal is directed for both parties:

2. In the case of a deposit for delivery, a loan for use, a bailment with an artist, and a pledge, the same law is enacted; and likewise, in the case of a person received under protection.

If the depositary do not acknowledge a deposit privately received; or the bailor, having received back what he had himself deposited, deny the receipt: or if he allege a deposit, though none have been made; in all these cases, ordeal is directed, if there be no evidence: this will be explained in its place. CHANDĒSWARA says; if a contest arise concerning a woman, a slave and the like, who, from fear or other motive, have sought protection, and are claimed by their lord, the same law is enacted. The meaning is, that, in this case also, proof by ordeal is directed.

HERE all the rules, declared in regard to a private deposit, are to be applied to each case, from deposits for delivery, to persons received under protection. Therefore, a depositary protects what he has received in trust, like his own property, from water, fire, thieves and other danger; and likewise, in

in the case of a person received under protection. Wherever the property of one person is, for some cause, delivered into the hands of another for safe custody, the rules, declared in regard to deposits, are to be applied: therefore, the law of bailments applies to a carriage and the like received on hire; and so, in the case of a person delivered by the king or the like into the hands of a guardian, or the produce of a field bailed for safe custody by a subject. What is the law in respect of bailments, which is extended to loans for use and the like? It is answered, all the rules, propounded by sages, from the delivery to the recovery of a deposit, must be understood.

### XIII.

MENU:—A SENSIBLE man should make a deposit with some person of high birth, and of good morals, well acquainted with law, habitually veracious, having a large family, wealthy and honest.

“ Of high birth;” sprung from an honest family. “ Of good morals,” whose conduct is laudable. “ Habitually veracious;” in his discourse observant of truth. “ Having a large family;” having sons, grandsons, or other family to support. “ Honest;” plain in his dealings, void of artifice, and so forth. With such a person should he make a deposit. Such is the interpretation approved by CULLŪCABHATTA.

“ HAVING a large family ” is explained in the *Prvāda Chintāmeni*, having many kinsmen. In the *Retnācara*, “ a deposit ” is expounded the thing to be bailed. “ High birth ” and the rest are conditions required to obviate all doubt of receiving back the deposit at a subsequent time: for, since the abuse of a deposit is a heinous crime, a person sprung from a good family will not abuse it; much less a person of good morals and well acquainted with law. A man habitually veracious will not assert a falsehood. Why should a wealthy man, content with his own wealth, commit a heinous crime, by embezzling another’s property? An honest man cannot commit a fraud. One, who has numerous offspring, even though he believe not another world, will not embezzle the property, lest his offspring

perish. Or it may be thus explained; he, who has no offspring, being unaided, cannot well protect the deposit. This agrees with the exposition of MISRA and others. The description is general, including exemption from other defects. The whole of it must be taken as a motive for confidence. So NĀREDA *says* (III), "when a man bails any of his effects to another, in whom he has confidence, &c." In this text (XIII) deposit is used in a general sense, comprehending bailments under seal and the rest.

## XIV.

VRĪHASPATI:—A MAN should make a deposit, with due consideration of the place, of the house, of the master of the house, and of his power, wealth, qualities, veracity, purity and kindred.

"THE place," which contains the thing deposited; with due consideration, whether it be secure from robbers and the like. Or "the place" may intend the town: considering the safety of a populous place, where the property is protected by many. "House" or wife (for the word has both senses); considering whether the wife be virtuous, lest, at her suggestion, the effects be secreted; for a man, though virtuously disposed, may be infligated, through lust, to secrete the effects. Or considering whether the "house" be built of masonry and secure from fire. "His power;" is the depositary capable of protecting the effects? "His qualities;" his honesty, his acquaintance with the law and the like. "His purity;" his avoiding sin and so forth. "His kindred;" his sons, grandsons and the rest.

## XV.

NĀREDA:—A DEPOSIT is declared to be of two sorts, attested and unattested; it must be restored in the condition *and manner*, in which it was bailed; if altered, there must be a trial by ordeal.

As unattested deposit is made, when a man has the highest confidence in another. If it be asked, why a similar distinction of loans has not been mentioned,

mentioned; it is answered, that from the nature of a loan, it must either be authenticated by witnesses or by a writing: for excessive confidence is forbidden.

*A rule of Ethics:—*PLACE not confidence in what is unworthy of confidence; nor excessive confidence in what is even worthy of confidence.\*

THE purpose of a deposit made to deceive heirs (VI) would be defeated, if it were publicly known. The selection of a proper person for the confidence reposed in him, at the choice of the owner, must necessarily be admitted, in contradiction to that rule of ethics, to fulfil the purpose of a deposit: but in the case of a loan, the selection, at the lender's choice, of a suitable person for the confidence reposed, is not proper; *the rule is positive*, like the prohibition against lending to infants. Therefore a loan unattested is not mentioned: and, in fact, such is the present practice.

A DEPOSIT must be restored in the condition *and manner*, in which it was bailed (XV). Thus, if it be bailed under a seal, it must be restored under that seal; if it be bailed before witnesses, it must be restored before witnesses; if it be privately bailed, it must be privately restored: so likewise, if it be bailed without a seal or unattested. Again; if more than one make or receive a deposit, they shall jointly recover or restore it: and similarly, in other circumstances. The same meaning is to be understood from the text of YA'JNYAWALKYA (V). and from the following text.

## XVI.

MENU:—WHATEVER thing, and in whatever manner, a person shall deposit in the hands of another, the same thing, and in the same manner, ought to be received back by the owner: as the delivery *was*, so *must be* the receipt.

As it may be questioned, whether the latter part be not superfluous, since it repeats what preceded, CULLU'CBHATTA says, 'it is mentioned as a

\* Cited from the *Herryanfa*, See Book I, towards the end of the first Chapter, p. 27.

\* cause: because it is a rule, that, as the delivery was, so must be the receipt, therefore the same thing ought to be received back, in the same manner. This directs, that, if gold and the like have been bailed under a seal, and the bailor, breaking the seal, say, "weigh it, and deliver it to me," he shall be amerced.' We do not find, how it appears, that he shall be amerced. If the bailor require it to be weighed, the king should compel him to receive it unweighed: and this is the purport of the text.

HERE lawyers, unfettered by ordinances, say, two terms ("from him, and by him") must be supplied: consequently the sense of the first part of the text would be, whatever thing (gold or the like), and in whatever manner, a person shall deposit in the hands of another, the same thing, and in the same manner, ought to be received by him, the depositary, from him, the bailor. The word delivery is in a passive form; as *the thing was delivered*, so *it must be received by the bailee*: and, if there be a subsequent contest respecting the quantity, and the king ask, "why did you receive it unseen, or unattested?" then the first part of the text furnishes an answer: "it was so received under the authority of the law." The intention of the latter part of the text is evident.

MENU clearly declares the form of a mutual deposit.

## XVII.

MENU: — BUT things, mutually deposited, should be mutually restored by and to the person, by and from whom they were received: as the bailment was, so should be the delivery.

DEVADATTA intrusts a thing to YAJNYADATTA; and YAJNYADATTA intrusts a thing to DEVADATTA: having been mutually received, the things should be mutually restored. One cannot alone receive his own property, merely because he delivered his own property. "As the bailment was, so should be the receipt:" a deposit, received with or without attestation, should be so restored. If one say, "let my chattel remain with thee," and the other also say, "let my chattel remain with thee," it is a mutual delivery:

if one say, " let thy chattel remain with me, and my chattel with thee," it is a mutual receipt and delivery : and, if some person, seeing that another is unable to protect his property from robbers, and intending to confer a favour, say, " let thy chattel remain with me ;" and if he, desirous of returning the favour, say, " thou hast many chattels of small value, let them remain with me," it is a mutual receipt. Or the distinction between mutual receipt and mutual delivery may be explained in any other manner. Thus some expound the text ; but CULLÚCABHATTA explains it by a deposit privately made : " a thing privately deposited" &c. A delivery mutually attested, that is, not attested by others. " By whom it was received ;" privately received by the depositary. " Mutually restored ;" privately restored to the bailor : to restore it before witnesses should not be required. " As the bailment was, so should be the delivery," is mentioned as the reason. " Should be restored ;" this rule regards the depositary ; "ought to be received" &c. (XVI) regards the bailor : consequently there is no *vain repetition*.

### XVIII.

VRĪHASPATI, quoted in the *Retnácara* : — THE very thing bailed must be restored to the very man, who bailed it, in the very manner, in which it was bailed : it must not be delivered to his heir apparent or presumptive.

If bailed before witnesses, it must be restored before witnesses ; and without exceeding the period for which it was bailed, if a period were stipulated : and, in the case of mutual deposits, the receipt must be mutual. The *Retnácara* interprets " his heir" &c. his son and the rest.

### XIX.

VRĪHASPATI : — A DEPOSIT is declared to be of two sorts, bailed before witnesses and privately bailed ; it must be preserved as *carefully as a son is cherished* ; for it would be lost by neglect.

2. THE merit of one who preserves a deposit, or protects a  
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dependant

dependant (\*), is the same with the merit of him, who gives golden vessels or clothes.

3. As the crime of a woman, who injures her husband, or of a man, who kills his son or his friend, such is the crime of depositaries, if the thing deposited be consumed, or spoiled by gross negligence.
4. A *prudent* man would not receive a deposit; but to destroy it, when received, is infamous; he must keep it with care, and restore it on a single demand.

For a written contract of bailment there is no authority in the law, nor in judicial practice: but doubts may be now obviated by making such a contract. A deposit *must be preserved* from robbers, from vermin, from decay and the like: if no care be taken, and the thing be never inspected, it may decay in the ground; or be stolen by neighbouring thieves entering the house; or, if it be small, it may be carried away by rats; in these and similar modes, it may be destroyed. Why should a man labour to preserve another's property? The text furnishes a motive (XIX 2). But he, who is not desirous of religious merit, will not preserve it: therefore it directs (XIX 3), that the sinful taint of a husband's murder, and similar crimes, is contracted by aliening a deposit without permission, and by neglecting to preserve it. The preservation of it is indispensable; therefore, a deposit should not be received by a person, who is not disposed to an act of duty or amity.

HERE it must be noticed, that, when the property of another is bailed by slaves, strangers, or robbers, to deceive the owner, that deposit ought not to be received: for usage *forbids it*; and the depositary might be suspected of theft, should he be unable to show, that the bailor actually made him receive the deposit. If, among undivided brethren, one parcener deposit joint property with some other person to deceive his coheirs, the depositary is censured.

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(\*) Or a person received under protection (XII).

“ A MAN should not receive a deposit ” (XX 4), because it is a crime in the depositary, if the deposit be consumed. “ But to destroy it is infamous : ” the particle may be taken in a connective sense ; and the meaning will be, the consumption and the destruction of a deposit are infamous. “ He must restore it on a single demand,” if no period have been stipulated ; but at the expiration of the period, if it were bailed for a stipulated time ; or the bailor may receive it back sooner, with the depositary’s consent.

## XX.

MENU :—A DEPOSIT, whether sealed up or not, should never be redelivered, while the depositor is alive, to his heir apparent or presumptive : both sorts of deposits are lost if he die ; but not, unless he die.\*

‘ THEY should not be redelivered to the son, the brother or other person, who would be entitled to them after the bailor. To assign a reason, it is said, “ both are lost &c.” that is, because both are lost, if they are delivered to a son or other heir, and he dies without delivering them to the owner. It follows, that *in such a case* they shall be made good by the depositary. But they are not lost, unless he die : they will be delivered by the son or other heir to the depositor ; they are not to be made good by the depositary. Consequently, if they be delivered to the heir, there is danger that the heir may die, and that the deposit must be made good ; therefore, neither sort of deposit should ever be redelivered to the heir.’

CULLUCABHATTA.

He supposes this case ; the heir dies after receiving back the deposit, and long afterwards the owner says, “ the deposit was not delivered to my heir, but remains with you, give it me.” It cannot be said, that, since the same may occur in the case of a debt, the delivery to a son and the like is

\* The latter part of the text has been otherwise translated by Sir WILLIAM JONES, “ both sorts of deposits, indeed, are extinct, or cannot be demanded by the heir, if the depositor die, in that case ; but not, unless he die, for, should the heir appear and keep them, the depositor himself may sue for the loss.” I alter the translation in conformity with the commentary.



improper even in that case ; and therefore the text, which directs payment to one of the family in default of the lender, is unmeaning. In that case, the delivery may be ascertained by attestation. It cannot be said, that here also it may be so ascertained ; for the attested recovery of an unattested deposit is forbidden (XVII) : and, even in the case of such redelivery of an attested deposit, the depositor's claim remains. Thus *the owner might say*, " on what consideration did you relinquish the deposit in my absence : " but, in the case of a debt, the creditor cannot say so. The text is not unmeaning, for there is a purpose in making the payment ; namely the recovery of a pledge when interest has ceased ; but, in the case of a loan unsecured by a pledge, upon which the highest interest has been received, the debtor may not repay it to the son or the like. In fact, there is no offence in repaying it to the son or other representative, on the consideration, that body is not immortal, and to remove the sin of debt ; for the debtor incurred the debt under the pressure of indigence. But, under the authority of the text, a deposit, voluntarily received, must be kept until the depositor return.

AGAIN, this should now be remarked : we perceive no offence in redelivering a deposit to the heirs of the depositor, before witnesses, under the apprehension of ill treatment from those heirs, *even* before the expiration of the period for which it was deposited.

If a son or other representative should die after receiving back the deposit while the depositor was alive, and it have not reached the depositor, having been expended by the heir ; and this be proved by witnesses and the like ; must the depositary make good the deposit or not ? To this it is answered, that, according to CULLUCABHARTTA, it shall not be made good : for he says, both sorts of deposits shall not be made good, if there be no doubt : and even sometimes, though the heir be not dead, they are not lost. Thus, if the heir be living, the depositary is justified by proof of the delivery to the heir : this is clearly expressed. What difference is there, if the heir be dead ? After the death of the heir there may be suspicion, if proof be deficient. It should be remarked on the term " heir apparent or presumptive " (*pratyantara* v. XX), that the word *prati* denotes similarity, as in the example " ABHIMANYU like ARJUNA." The word *anantara* signifies proximate without an interval.

Consequently

Consequently a deposit can be legally received back by the nearest heir alone.

BUT CHANDÉSWARA, without employing the word 'even' says; sometimes the depositor shall recover it, though the heir be not dead: it follows, that sometimes the deposit is extinct, though the heir be not dead; that is, when the heir dissipates it without permission. Consequently, even in that case, it must necessarily be made good by the depositary. Otherwise, the expression, "but not, unless he die," would be unmeaning. In such a case it must certainly be made good. This is CHANDÉSWARA's meaning, and is proper; for, a son having no dominion over the paternal wealth while the father lives, his receipt of the thing deposited is not valid; as is declared by HARÍTA (Book V, v. VIII). Thus the son's receipt of it is similar to a stranger's receipt. But when it is any how received by the owner, the delivery becomes valid. Consequently, if it any how fail of reaching the owner, it must be made good. But, if the son conduct all the affairs while the father lives, there is no offence in a redelivery to him. However, a deposit, expressly bailed to deceive a son, must on no account be delivered to that son; while the father lives, without his directions: but, with his permission, there is no offence in redelivering the deposit to the son: and, after the death of the depositor, there is no harm in the redelivery of it to the heir.

## XXI.

MENU:—BUT, if a depositary by his own free act shall deliver a deposit to the heir of a deceased bailor, he must not be harassed either by the king, or by the kinsmen *of the deceased*.

THE expression, "by his own free act," implies, that while the bailor lives, it shall not be delivered, though demanded by the heir: but after the bailor's death, it should be delivered, even without a demand.

CHANDÉSWARA.

HE must not be harassed by the king, on the ground of its being the bailor's property.

CULLŪCABHATTA.

“ BY the kinsmen” of the bailor: by his father’s sister’s sons, his mother’s sister’s sons, and the rest. The meaning is, that after the bailor’s death his sons, or other heirs, have dominion over the effects deposited: and if a son be living, it must not be delivered to a grandson, whose father is alive.

If a deposit, though carefully kept, be taken away by thieves or the like, there is no fault in the depositary.

## XXII.

NA’REDA:—WHAT is lost together with the property of the bailee, is lost to the bailor; so, if it be lost by the act of God or of the king, unless there was a fraudulent act on the part of the depositary.

“LOST together with the property of the bailee;” meaning *generally*, if there be no fraudulent act on the part of the depositary. Thus, if the deposit only be lost, and not even a trifle belonging to the depositary, yet, if it were kept with care, and consumed by time only, there is no fault in him. If it be lost by the act of God (broken by a wall falling down), or be lost by the act of the king (plundered by the forces of a foreign king; or oppressively sold, or the like, by the king of the country;) then, as in the case of consumption by time, there is no fault in the depositary. But he is criminal, if fraudulently he place the thing deposited near an old wall or the like, while he places his own property elsewhere; or if, concealing his own property, he show the deposit to the king. The principle of this rule is, that the depositary must make good the deposit if he be in fault; and not, unless he be in fault. But, if the depositary say, it is lost, though it be not lost; then, on failure of evidence, it shall be tried by ordeal.

## XXIII.

VRĪHASPATI:—If it be destroyed by the act of God or of the king, together with the goods of the bailee, there is no fault in him.

“TOGETHER with the goods of the bailee;” to denote, that there is no fraudulent

fraudulent act on the part of the depositary. It is to be remembered, that, if he deliver the deposit to the king together with his own goods, without mentioning that it belongs to another, even in that case the depositary is criminal: and if it were kept with care, then, even though the deposit alone be seized by thieves or the like, there is no fault in the depositary. Herein the *Retnācara* and the rest concur.

#### XXIV.

CA'TYA'YANA:—IF a thing deposited be lost together with the goods of the bailee, though not by the act of God or the king, it is declared to be lost to the bailor.

THE loss of the bailee's goods, every where mentioned, is intended as a general exception to all fault in the bailee. It is therefore inferred, that, even if the deposit alone be lost, but without any fault in the depositary, it shall not be made good; but if lost by a fraudulent act on the part of the depositary, it must be made good.

THE *Retnācara*.

#### XXV.

YA'JNYAWALCYA:—BUT he shall not be compelled to replace that deposit lost by the act of God or the king, or seized by robbers.

HE shall not be compelled to make good a sealed deposit, lost with the vessel in which it was contained (being seized by the king, or washed away by water or the like, or stolen by thieves; ) if there be no fraudulent act on his part.

THE *Mitāc'hārā*:

A SIMILAR exposition is delivered by SU' LAPA'NI, who reads the text *daivata*, instead of *daivica* (but the sense is unchanged). If it be lost by a fraudulent act on the part of the depositary, or by his fault, he shall be compelled to make good the deposit, and shall be amerced. This will be declared. A distinction is mentioned in the following text.

#### XXVI.

**MENU:**—If a deposit be seized by thieves, or destroyed by vermin, or washed away by water, or consumed by fire, the bailee shall not be compelled to make it good, unless he took part of it himself.

If a person, receiving a deposit, consume a part of it, and afterwards the remainder be seized by thieves or the like, some hold, that, under the authority of the text, the depositary shall in that case make good the whole deposit. But others say, that the depositary shall make good the whole, if he accidentally receive any part of the deposit, which has been seized by thieves, or the like. This is denied, because it is not fit, that the loss should be his, without any fault in him: but if he do not make it known, that he has received the thing, he is criminal, and shall make good the deposit, as in the preceding case. Since he is criminal, if he consume any part of it, whether before or after it was seized by thieves or the like, he shall make good the whole deposit. This is the full meaning of the text. In that case he shall make it good with interest, if he consume a part of the deposit, but without interest, if he merely omit to make it known, that he has received a part of it.

If he take a part of it, and deposit the remainder elsewhere; or neglect it, thinking that he will not be liable to make good the whole, in that case, the whole must be made good.

MISRA.

When the deposit is lost by the depositary's fault, he shall make it good; but when it is lost by the fault of the person, through whom it was deposited, then this person shall make it good.

## XXVII.

**CA'TYA'YANA:**—What is lost by the fault of the depositary, is lost to him.

2. HE, by whose fault any thing is lost or taken away, shall be

be compelled to make it good with interest, unless *it be lost* by the act of God or the king.

BUT, even if the depositary have shown *a probable* cause of its destruction, if the thing deposited appear to have been lost by any fault on his part, other than neglect, he shall make it good.

The *Retnâcara*.

A MAN, addressing some person, says, "let my property remain in deposit with thee;" he replies, "my house is infested by rats and other vermin, place it not there;" the other rejoins, "be it so, what can vermin do?" and he, accordingly, deposits the goods. It follows, that in that case there is no fault in the depositary, if it be lost by neglect. But if he place it out of the house, or in another place, and in consequence it be seized by thieves, or spoiled by rain; or if, from anger or some other motive, he cast it of his own accord into the water; or if he deliver it to the king, who causes his household effects to be sold on account of some fault; if the thing deposited be lost by these, or other faults on the part of the depositary, he shall make it good. This is intended by the first hemistich (XXVII).

WHEN, addressing some person, a man says, "bail this grain to DE'VADATTA;" and he, going to DE'VADATTA, says, "this grain is bailed to thee, by CHAITRA, through me;" and DE'VADATTA answers, "place it in the house;" and he places the grain in the middle of the house, but in a damp spot; and the grain is destroyed by the damp: in this case, the grain shall be recovered from the messenger. This is intended by the second verse (XXII 2): for, otherwise, it would be superfluous. Thus, if the depositary be understood in the words, "he, by whose fault," the sense is the same as in the preceding hemistich; and if the depositor be understood, then the receiver and giver would be the same; it is therefore properly applied to an intermediate person: and, according to the *Dîpalcikâ* when the deposit is destroyed by the fault of the person who causes it to be placed, he shall make it good. But when the owner bails effects notwithstanding the depositary's objections, and those effects, being neglected,

are lost, but without any other fault on the part of the depositary, in that case no blame shall be imputed to the depositary.

### XXVIII.

CA'TYA'YANA:—If the depositor, though apprized of its danger, *nevertheless* bail the thing, and it be destroyed by any injury, the depositary shall not be compelled to make it good.

If the depositor know the loss of his effects to be probable (having been forewarned by the depositary, that the king would force the house, and therefore he ought not to place his effects there); if he nevertheless bail those effects, there is no fault in the depositary, should they be lost by any cause, whether it be the occurrence which was previously apprehended, or *some accident* which was not apprehended. In this exposition, the *Retnacara* and the rest concur.

Is this text applicable or not, when, in such a case, the deposit is lost by negligence? Here it is said, that the text does apply in the case of a loss occasioned *merely* by negligence, without any other fault: for another text (XXIV) *already* shows, that there is no fault in the bailee, if the deposit be lost without neglect or other *fault*, and it is declared, that the depositary is criminal, if it be lost by his fault. It cannot be said, that the former text (XXIV) intends the case of a deposit lost together with the goods of the bailee, but that this text (XXVIII) intends a deposit consumed by time, though not neglected, and without a concurrent loss of the bailee's own effects. For, according to CHANDESWARA, it is not limited to the case of the bailee's goods being lost with the deposit; 'the loss of his goods, every where mentioned, is intended as an exception to other faults also,' and the text (XXIV) is taken only in the sense so inferred: this corresponds with what CHANDESWARA has said in explaining another text (XXVII)

### XXIX.

GO'TAMA:—THE necessity of making good a deposit, a thing bailed for delivery to a third person, a pledge, a thing borrowed

borrowed or hired and the like, if destroyed by the fault of the bailee, shall not fall upon any of his heirs, if they were free from blame: but it falls on the bailee, by whose fault the thing is destroyed.

“Deposit” &c. in a general sense. Whatever has been mentioned by any sage or author, as partaking of the nature of a deposit, must be understood. “Heirs;” sons, grandsons and the rest. “Free from blame;” not in fault. Consequently, should the depositary die, the owner recovers the thing deposited from the heirs of the bailee, *if it be lost by their fault*: thus is the law settled. But, if it be lost without any fault, by accident or the like, he does not recover it from the heirs. This exposition is founded on the gloss of the *Retnācāra*.

Is not this gloss ( “heirs:” sons, grandsons and the rest) unmeaning; for the depositary himself is free from blame, if the deposit be lost without any fault on his part? It must be understood, that this text is intended to obviate the doubt, whether, in case of the depositary dying after having occasioned the loss of the deposit by his own fault, the owner may recover it from his sons, because it was lost by their father’s fault: but if it be lost by their fault, it must be made good by them (XXVII 2).



## SECTION II.

## ON THE RECOVERY OF A DEPOSIT.

IT has been said, that *the depositary* shall be compelled to make good a *deposit destroyed by his fault* ; shall he be compelled to make it good with, or without, interest ?

## XXX.

VYA'SA :—FOR a thing voluntarily wasted, the bailee shall be forced to pay the price with interest ; for a thing neglected, the value only ; for a thing lost through *slight* inattention, something less.

WHEN the owner, having bailed a thing, demands it at a distant time, and the depositary, having wasted it, cannot deliver it ; then, a contest arising thereon, if it be proved that he has wasted the thing, he shall be compelled to make it good with interest. “ Wasted ” is not exclusively intended ; but any advantage, which the depositary procures for himself *by the thing bailed*, is fully meant ; hence the sale and other embezzlement of the thing deposited is comprehended in this precept.

## XXXI.

VRĪHASPATI :—WHATEVER depositary procures advantage for himself by the thing bailed, *without the consent of the owner*, shall be amerced by the king, and made to pay the price of that thing with interest.

HERE also “ *without the consent of the owner* ” is determinately meant. Having procured advantage to himself by the thing bailed, without the consent of the owner, if he make it good in another mode, he may be exempted

ed from the payment of interest, and from the fine, by the forbearance of the owner, and of the king.

The *Retnâcara*.

THE commentator's meaning is, that, even if the thing bailed be wasted, the payment of interest and of a fine is not customary; but the value of the chattel only must be made good. Otherwise this text would be trivial, *because the punishment of an offender, is a matter of course.*

THE preceding text (XXX), attributed in the *Mitâcsharâ* to CA'TYA'YANA, is ascribed to VYA'SA by CHANDE'SWARA, MISRA, BHAVADE'VA and others. The interest, according to MISRA, shall be the eightieth part of the principal by the month, as ordained by the law.

### XXXII.

CA'TYA'YANA : — A DEPOSIT, the balance of interest, a commodity sold, and the price of a commodity purchased, not being paid after demand, shall bear interest at the rate of five in the hundred.

“ If the debtor be a *Sûdra* ” must be supplied, to reconcile it with the text, which directs interest at the rates of two and three in the hundred and forth (Book I, v. XXIX 2).

IT is directed, that a thing voluntarily wasted shall bear interest: does interest commence from the day when the thing was deposited, from the day when it was wasted, or from the day when it was demanded? 1. To this it is answered, it shall bear interest after six months from the date of the deposit: for, the words “ after three seasons ” being repeated in this text (XXXII) from the preceding text (Book I, v. LVI 1), it is proper to assume the date of the deposit, in answer to the question, from what date shall three seasons be counted? 2. Some hold, that a deposit, not delivered on demand, shall bear interest six months afterwards, because demand is suggested by the context where MISRA directs interest at the rate of five *panas* in the hundred after six months. 3. Since the wasting of the thing deposited is the cause of its

bearing interest, under the authority of the text (XXX), we hold it proper, that interest should commence (even earlier than six months,) from the day when the thing was wasted, but the other text (XXXII), ordaining interest after six months, is applicable to the case, where a fraudulent depositary, though the thing have not been wasted, refuses to deliver it on demand, like the price of a commodity purchased, and like a balance of interest, and so forth. What then shall be the rate of interest? Two in the hundred, and other rates ordained by the law; because those are in their nature legal rates, and because interest is so limited by the text of MENU (Book I, v. XLII): and the interest and amercement should be proportioned to the magnitude of the offence. But this does not coincide with the opinion of the author of the *Mitacsharâ*, for he applies the text (XXXII) to a thing voluntarily wasted, and does not distinguish *payment of interest* and exemption from interest, in cases where a thing deposited is lost by neglect, and so forth.

THE text of VYA'SA (XXX), being placed under the head of deposits damaged, relates to such as are damaged by the use of them. Consequently, if a stone or the like, bailed without seal, be used for three or four days, it shall not be restored with interest the payment of interest regards things damaged by the use of them

### XXXIII

YA'JNYAWALCYA:—If the depositary, of his own accord, *without the consent of the owner*, use the thing deposited, he shall be amerced, and compelled to pay the price of the thing with interest.

“Of his own accord,” that is, without the assent of the owner. “Use the thing deposited;” employ it for his own purposes. Such a depositary shall be amerced. The fine not being specified, he shall be amerced in the value of the thing, like the depositary, who does not deliver the thing on demand; and he shall be compelled to pay the price of the thing with interest.

“For a thing neglected, the value only” (XXX), the depositary shall be compelled to pay the value only of a thing neglected, that is, of a thing lost

by his negligence, such as disregard of it, because it was another's property: in this case, interest shall not be exacted. It must be remembered, that, according to the third opinion abovementioned, if it be not delivered on demand, it shall bear interest after six months; but the value only shall be required, if it be made good immediately after the demand.

## XXXIV.

VRĪHASPATI:—SHOULD the bailee suffer the thing bailed to be destroyed by his negligence, while he keeps his own goods with very different care, or should he refuse to restore it on demand, he shall be compelled to pay *the value of it* with interest.

“By his negligence, while he keeps his own goods with very different care;” by neglect, after separating the thing bailed from his own effects. If the depositary, fraudulently removing the thing deposited, which was placed with his own goods, secure his own effects, but neglect the deposit; and the thing, being guarded by no one, but left any where unheeded, be consequently lost; in that case he shall pay interest by way of fine in like manner as if it had been wasted: for the removal of that thing was a great offence. In this case, the payment of an equal fine to the king is proper; but it is not mentioned by any sage.

“OR should he refuse to restore it on demand;” should he refuse or evade restoring the deposit, without making it known, that the thing has been lost by neglect; (for example, if he say, “am I thy servant, that thou shouldst deposit thy effects with me? I know not where thy goods were placed, nor by whom, nor what is become of them;” or, “that thing was not bailed, but given to me;”) in this case, it shall be made good with interest: for his fault is great, in not making it known, that the thing bailed has been lost. According to the third opinion, interest must be paid from the day the thing was lost; in other instances, according to the nature of each case, interest commences after six months *and so forth*. Thus some lawyers reconcile it to the law, which directs the value *only* to be made good, if the thing bailed be not restored on demand. Others hold, that, if the thing deposited be not restored

restored on demand, it shall be made good to the owner with interest, and a fine be paid to the king equal to the value of that thing: thus establishing by implication the consistency of all the texts with each other. Some reconcile them by directing the value to be made good with or without interest, according to the qualities of the depositary.

*The Mitácshará* explains "something less" (XXX) a fourth less. The meaning is, that, if the thing be inadvertently lost, (having been neglected through forgetfulness, long after it was received in deposit,) the fault being small, three fourths only of its value shall be made good.

## XXXV.

YA'JNYAWALCYA:—If a *sealed deposit* be lost, *even by the act of God or the king*, after it has been demanded and not restored, the bailee shall be compelled to pay the value of the thing, and an equal amercement.

If it have been demanded (required by the bailor) and not restored by the bailee, should a loss of the deposit afterwards happen by the act of God or of the king and so forth, effects of equal value must in that case be given, and a fine of the same amount be paid to the king.

THE *Mitáshará*, *Retnácara*, and the rest concur in this exposition. The author of the *Mitácshará* inserts this hemistich as an exception to a text quoted in the preceding section (XXV). Here the thing is made good without interest, because he must make good, out of his own effects, the thing bailed, which has been lost by accident. This is not inconsistent with the opinion of others grounded on the following text.

## XXXVI.

NA'REDA:—He, who restores not a deposit to the bailor, though required by him, shall be fined to the use of the king; and, if it be *afterwards* lost, shall pay its full value.

2. AND he, who procures advantage for himself by the thing

*bailed*, without the consent of the bailor, shall be amerced, and be liable to pay the value of the thing with interest.

THEY hold, that a fine is here directed, if the deposit be fraudulently withheld, though not lost; and the fine shall be equal to the value of the thing, as in the preceding cases, and as intimated by the sequel of the text: the deposit must of course be restored; but it shall be restored with interest, on the concurrent import of the text of VRĪHASPATI.

IF a thing, not restored on demand, be lost, without any fault on the part of the depositary, by the act of GOD or the king, its value shall be made good to the owner without interest; as has been already mentioned almost *in as many words*. A certain author says, if a thing be merely refused when demanded, it shall be made good with interest; but, if it be also lost by accident, its value shall be paid without interest, and a fine shall be paid to the king. Of these opinions, whichever seems best supported, may be adopted.

THE second verse (XXXVI 2) has been in a manner already expounded; for it corresponds with the text of VRĪHASPATI (XXXI): and the amercement shall be equal to the value of the thing; for what is affirmed in one case, is applicable to other similar cases.

### XXXVII.

MENU:—HE who restores not a thing really deposited, and he, who demands what he never bailed, shall both be punished as thieves; or pay a fine equal to the value of the thing claimed.

IN a suit, where a deposit is alleged by one party and denied by the other, if it be proved, that the thing was in fact bailed to him, the depositary shall be punished as a thief; according to the quantity and nature of the thing proved to have been bailed, he shall be punished as a thief, by death or confiscation or other punishment ordained for the theft of such things in certain quantities: and such shall be the punishment, even though the deposit be

merely denied. But if the depositary be *in general* virtuous, the legislator directs, that he shall only pay a fine equal to the value of the thing: consequently he shall not in this case be punished by death or *confiscation* or the like. The same must be understood of the claimant, according to the circumstances of the case, if it be proved that no deposit was made. CHANDÉSWARA holds, that they shall be punished as thieves, if the suit regard valuable things; and pay a fine equal to the value of the thing in the case of a trifling demand. CULLU'CABHATTA says; 'they shall be punished as thieves, if gold, gems, pearls or the like be demanded; or, in the case of a trifling demand, shall pay a fine equal to the value of the thing claimed.' But a *Bráhmāna*, he adds, whether virtuous or not, who withholds a thing deposited, or demands what he never bailed, is not liable to the punishment of death and the like.

## XXXVIII.

MENU:—THE king should compel a fraudulent depositary, without any distinction between a deposit under seal or open, to pay a fine equal to its value.

AND that, if the *Bráhmāna* be free from vice; but if he be vicious, he shall pay a fine equal to double its value, as directed in a text which will be quoted from the *Matsya purāna*. Such is the modern interpretation. CHANDÉSWARA remarks; punishment similar to that of theft is denied by the second text (XXXVIII); and the exaction of a fine equal to the value of the thing is positively ordained, whether the deposit be of considerable or trifling value; and that is to be understood in the case of a *Bráhmāna* being the depositary. "Without any distinction between a deposit under seal or open;" from this expression it appears, that all that which has been propounded respecting the nondelivery of open deposits and so forth, is also applicable to the nondelivery of a sealed deposit, the unauthorized use of it and so forth. CULLU'CABHATTA says, let the king punish a fraudulent depositary in a sum equal to the value of the thing bailed: from the parity of the cases, the text does not repeat, that he, who demands what he never bailed, shall also be fined. If the offence be great, it might appear from the preceding text, that corporal punishment is

is to be inflicted on any other than a *Bráhmāna* ; this text denies it, for the law directs a pecuniary fine. Nor is the preceding text unmeaning ; for this text applies to a first and slight offence ; and the preceding text intimates a pecuniary fine, for a second offence ; that is, the highest amercement ordained in cases of theft.

### XXXIX.

**MENU:—**THAT man, who, by false pretences, gets into his hands the goods of another, shall, together with his accomplices, be punished by various degrees of whipping or mutilation, or even by death.

If any man, except a creditor or a *Bráhmāna*, by fraud or by violence and causing much pain and so forth (for “pretence,” is expressed in the plural number) get into his hands the goods of another, whether they be things bailed or otherwise (for the precept is general ; ) he shall, together with his accomplices, be punished by various degrees of corporal pains short of death, or even by death ; that is, by a blow with the hand or with sandals, or by cutting off the hand or foot, or even beheading, according to the value of the goods, the qualities of the man, his class, and the like. First taking the goods, afterwards behead him or otherwise punish him.

“ By false pretences ;” by frauds of various kinds. “ His accomplices ;” those who have assisted him in getting into his hands the goods of another. “ Publickly ;” in an open place. CHANDÉSWARA.

HE, who obtains the goods of another by fraud, under a false pretence, (telling him ; “ the king is angry with thee, I will save thee, give me something,” and thus receiving, as a gratuity, wealth, a female *slave*, or the like ; ) shall, together with his accomplices, be punished by the king in the presence of many people, by various degrees of punishment, such as mutilation of hand or foot, beheading, and the rest. CULLÚCABHATTA.

### XL.

*Matsya purána* :—HE, who restores not a thing really deposited,



posited, and he, who demands what he never bailed, shall both be punished as thieves, or shall pay a fine equal to double the value of the thing claimed.

THIS text is reconciled by CHANDÉSWARA to the text of MENU (XXXVII), by directing, that the fine shall be equal to the value, or to double the value of the thing claimed, according to the good or bad general conduct of the person to be punished. Any other than a *Bráhmāna*, if vicious, shall be punished as a thief; if virtuous, shall pay a fine equal to the value of the thing: but a *Bráhmāna*, if vicious, shall pay a fine equal to double the value of the thing; if free from vice, a fine equal to the value only. Any other than a *Bráhmāna*, who, by false pretences, gets into his hands the goods of another, shall receive corporal punishment proportionate to the case; but a *Bráhmāna* shall incur the pecuniary punishment substituted for corporal punishment, as declared under the title of theft: such is the modern interpretation.

If the goods of another be obtained by false pretences, various degrees of corporal punishment shall be inflicted on the offenders. The fraudulent depositary shall be punished as a thief, if the deposit consist of gold, gems, pearls, or the like. In the case of a trifling demand, the fine shall be equal to the value of the thing, if it concern any other than a *Bráhmāna*, and his general conduct be good; but equal to double the value, if his morals be not good. A *Bráhmāna* shall never be punished like a thief, whether the value of the deposit withheld be considerable or trifling, nor if the thing have been obtained under false pretence, but he shall pay a fine equal to its value. Such is the mode according to the opinion of CHANDÉSWARA. But according to CULLÚCABHATTA, any other than a *Bráhmāna*, who obtains gold, gems, pearls or the like, by false pretences, or withholds a deposit consisting of such valuable effects, for a second offence shall be punished as a thief; but if the thing be of trifling value, he shall pay a fine equal to its worth. It certainly follows, that in all cases a *Bráhmāna* shall pay the value of the thing. Or a fine, equal to double the value of the thing (XL), may be applicable to the case of a *Bráhmāna*, on a second offence, if gold or pearls or the like be demanded; but the fine

fine shall be equal to the value only, for a first offence, whoever be the person, or whatever be the thing. *MĒNU* mentions incidentally punishment by death and so forth in the case of a man, who obtains the goods of another by false pretences.

SOME hold, that he, who restores not a deposit or who embezzles it, and he, who falsely claims a deposit, and *thus* obtains the goods of another by false pretences, shall be punished as thieves, if they be vicious and devoid of all virtue: but, if neither vicious nor virtuous, or both vicious and virtuous in equal degree, they shall be amerced in double the value of the thing; and if virtuous and not vicious, in the value only. By the term "not restoring a deposit," is intended imposition by artful discourse, not the concealment of the deposit; but embezzlement is the fraudulent withholding of the deposit: the fraudulent withholder covetously desires to appropriate the thing by false assertions; he is described by *CULLUĀBHATTA*. Since corporal punishment cannot be inflicted on a *Bráhmāna*, the punishment substituted for it, under the title of theft, must be understood in the expression "punished as thieves." In the second text quoted from *MĒNU* (XXXVIII) "shall be punished as thieves" must be fetched from the preceding text (XXXVII): and the latter text (XXXIX) gives some detail on the punishment of thieves. The texts of other pages (XXXVI &c.), intimating a fine equal to the value of the thing, relate to the case of a man, who is in general virtuous and free from *all* vice. Of the various ancient and modern opinions, one is to be selected; many have been mentioned for discussion.

*CA'TYA'YANA* propounds a distinction on bailments for a stipulated time.

## XLI.

*CA'TYA'YANA*:—A DEPOSIT (*upanid'hi*) shall be recovered at the time stipulated; but let the owner leave it until the period expire: when that does expire, if the depositary restore not the thing, he shall be compelled to pay the fine.

“ RECOVERED ” by the bailor, “ At the stipulated time ;” at the fixed time for receiving it back. “ Until the period expire ;” whilst less than that time is elapsed. Hence he shall recover it when the period is elapsed and not before. But a depositary, not restoring the deposit when the full period is expired, shall be chastized. *The Retnâcara.*

WHATEVER fine, for whatever kind of property, has been declared in the case of a thing bailed without stipulating a period, double that fine shall, on the authority of the law, be paid by him, who does not restore at the stipulated time a thing of a similar kind, which had been bailed for time. It follows, that, in the case where the fine is ordained at double the value of the thing bailed, he shall pay four times the value, if it was bailed for time.

SIMPLE men hold, that “ double the fine ” intends double the value including the fine ; the fine shall be equal to the value of the thing, and the value shall be paid to the owner. This supposes a case where the depositary is in general virtuous : and the text intimates, that there is no fine, if a thing bailed for time be refused before the time expire.

BUT others interpret the text, ‘ when a period is not stipulated,’ instead of “ when the period does expire.” If the depositary restore not the thing on demand, he shall pay double the fine, that is, double the value including the fine ; and they apply this hemistich to the case of a thing bailed for no stipulated time, provided the depositary be in general virtuous. Others again explain “ double the fine,” double the sum as a fine : consequently the depositary shall pay double the value of the thing by way of fine : and they hold, that this is consistent with the opinion delivered in the *Retnâcara*, where this text is considered as relating to the same subject with the text of the *Matsya purâna*. This opinion, in part comprehending that of others, seems satisfactory.

A DEPOSIT ( *upaniṣṭi* ) is here employed in a general sense (v. VIII).

## XLII.

CAṬYAYANA:—HE, who having received a loan for use,  
does

does not return it, though required by the owner, shall be compelled to restore it by harsh reproof, or shall be amerced if he *still* refuse to restore it.

HAVING borrowed ornaments for decoration, an awning or the like for a company, and so forth, if he do not restore them, though demanded by the owner, the king, reproaching him in opprobrious terms, shall require him to return them; if even then he restore them not, he shall be amerced: and the fine may be equal to the value of the thing, as before directed. For CA'TYA'YANA applies the law respecting bailments to loans for use and the like, declaring, that "these rules are propounded for all deposits (*upanid'hi*)."

But the additional text intimates a distinction, which will be mentioned by and by (LI).

It must be considered, that if a creditor, having artfully obtained from his debtor an awning or the like, refuse to restore it, employing legal deceit, as authorized by VRĪHASPATI, for recovery of the debt, he is not to be reproached; but shall be made to give credit for it in payment of the debt: and that supposes the period, for which the loan was made, to have expired; and the debtor to have neglected, or to be unable to pay the debt. But if the period have not expired, he cannot employ artifice. And further the same rule is applicable to deposits and the like, according to circumstances.

A DISTINCTION is mentioned in the case of loans for use.

### XLIII.

CA'TYA'YANA:—WHEN it is borrowed for a particular purpose or a specified time, if it be demanded when the purpose is only half accomplished, it shall not be recovered; nor shall the borrower be compelled to restore it.

IF a man have borrowed an awning for the company entertained at the nuptials of his son, the owner cannot take it back, on the day of the nuptials, after one watch of the day is passed; for the purpose is only accomplished in part. But it may be taken if the purpose have been fulfilled: it certainly cannot

cannot be exacted, if any part of the purpose be yet unaccomplished. So, if ornaments or the like be borrowed to be worn a month, the ornaments cannot be taken back before the end of the month : and the wearer of the things borrowed shall neither be amerced, nor reproached.

A FURTHER distinction is mentioned.

#### XLIV.

CA'TYA'YANA : — BUT, where the owner's purpose would be disappointed from the want of that thing, the borrower may be compelled to restore it, before the time stipulated, even though his purpose be only accomplished in part.

“ WHERE the owner's purpose would be disappointed” (*vipatti*); where his business would go to ruin, according to the literal sense of the verb *pad* move. Consequently, if the owner's business would be exposed to disappointment for want of that thing, it may be taken back by him before the period expire, even though the borrower's purpose be only half fulfilled ; meaning generally though it be not fully accomplished. If the borrower refuse to restore it immediately, he may be fined or reproached, according to circumstances.

It must be understood, that all these rules provide against fraud. Therefore, when a thing, borrowed to be used a month, is sent to another province, and the owner happens to need the thing, but it cannot be brought back, the borrower shall not be fined or reproached, though the owner's purpose be disappointed : but the borrower must mention at the time of borrowing the thing, that he intends to send it to another province. This must be considered as deducible from plain reasoning.

WHAT is to be done in a suit, wherein a deposit is alleged by one party and denied by the other ? There must be a trial by ordeal (XV).

“ A DEPOSIT is declared to be of two sorts.” A deposit authenticated by a writing is not distinguished by any sage. This meaning is there denoted : without

without a purpose of his own, a depositary does not execute a writing; but the depositor causes the bailment to be attested. Why is it said, under the title of loans, that a written acknowledgement of a pledge shall be given by the creditor to the debtor? The answer is, as a loan is made from a desire of gain, so a writing is executed by the creditor from a wish to confer a favour while he takes a pledge, by furnishing grounds for confidence, that the thing shall be received back. But some admit a deposit authenticated by a written contract.

“ IT must be restored in the condition and manner in which it was bailed” (v. XV): the deposit, whether sealed or open, attested or unattested, must be received back in the same manner in which it was bailed. If altered, or denied, there must be a trial by ordeal: without it the deposit is not established, on the simple assertion of the plaintiff.

Two modes of proof are declared for the two sorts of deposit, attested and privately bailed.

#### XLV.

VRĪHASPATI:—HIM, who is convicted by the evidence of witnesses, or by ordeal, of secreting a deposit received, let the king compel to restore the deposit, and to pay a fine equal to its value.

IF an attested deposit be denied by the depositary, let the king, ascertaining it by the evidence of competent witnesses, compel him to restore it; and, ascertaining by ordeal a thing privately bailed, let him compel the depositary to restore it. On the authority of the text of YĀJÑYAWALKYA (“on failure of each of these, ordeal is ordained in each case”) proof by ordeal is admitted by the author of the *Mitāccharā*, on failure of evidence.

#### XLVI.

MENU:—THE king must decide the questions after friendly admonition, without having recourse to artifice; for, the honest disposition of the man being proved, the judge must proceed with mildness.

. OMITTING reproaches and artifice or the like, such as bailing other effects to him, let the king decide the question after friendly admonition, and not hastily direct a trial by ordeal ; or considering the character of the man, and knowing his honest disposition, let the judge proceed with mildness. The text, thus expounded by CULLU'CA BHATTA, forbids hasty recourse to ordeal. Therefore recourse must be had to sensible proofs.

## XLVII.

MENU : — HE, who restores not to the depositor, on his request, what has been deposited, may first be tried by the judge *in the following manner*, the depositor himself being absent.

2. ON failure of witnesses, let the judge actually deposit gold, *or precious things*, with the defendant by the artful contrivance of spies, who have passed the age of childhood, and whose persons are engaging.
3. SHOULD the defendant restore that deposit in the manner and shape, in which it was bailed *by the spies*, there is nothing in his hands, for which others can justly accuse him ;
4. But if he restore not the gold, *or precious things*, as he ought, to those emissaries, let him be apprehended and compelled to pay the value of both deposits : this is a settled rule.

If the depositary do not restore the thing, though required by the depositor, let him be sued before the king. Let the judge immediately demand it of the depositary with mild expostulation, without threats. If the depositary, apprehending the disgrace of a fine, or of corporal punishment, which it is the king's duty to inflict, and reflecting that he cannot conceal the fact, acknowledge the deposit, he shall be compelled to restore it : and in this case, there is no ordinance exempting him from

a fine. But if he do not acknowledge the deposit, let it be tried by oral evidence: this appears from the mention of "failure of witnesses."\* If there be no witnesses, (the deposit having been privately made, or the witnesses being dead,) the legislator directs, "let the judge actually deposit gold, or *precious things*, with the defendant by the artful contrivance of spies apt in detecting secret practices, who are neither very old nor very young, and whose persons are engaging:" meaning generally spies qualified for the employment. By artful contrivance or stratagem, actually depositing gold belonging to himself, let him try the matter; the text should be so supplied. The legislator subjoins the test: should the defendant's veracity be unimpeached in every respect, the deposit being kept *and restored* as it was bailed, he must be acquitted of the offence for which he is accused by the claimant: because, were he dishonest, he would secrete the thing bailed by disguised emissaries. Let the judge also try the honesty of the supposed depositor; and if both appear honest, let him have recourse to some other mode, ordeal or the like: such is the induction of common sense. "But if he restore not the gold," let him be compelled by harsh reproof, to make good both sorts of deposit, sealed and open;\* and the reproaches and punishment shall be proportioned to the trouble he has occasioned. The *Retnâcara* and the rest concur in this interpretation.

HERE a doubt may occur, should the supposed depositary, or depositor, be acquainted with the rules of judicial procedure. If the man do not act dishonestly in regard to the thing bailed by emissaries, though he be dishonest in regard to the deposit claimed, his practices cannot easily be detected. For this purpose much labour must be employed. Let the judge, night and day, place spies in disguise, on all sides of him, and near the walls of his house, that it may be known, by means of such emissaries, what conversation he holds with his intimate friends, at various times; and what his occupations are: the mode mentioned by the sage is merely an example.†

CHIAN-

\* The translation of the text, as given in the Institutes of Hindu law, Chapter VIII, v. 184, has been followed in preference to this interpretation.

† The compiler takes occasion to relate a popular tale. A soldier, intending to travel to a country, and wishing to place in other hands his property consisting of gold and silver, put it



CHANDÉSWARA expounds "artful contrivance," stratagem. He, who interrogates (*pricb'bat*), is the interrogator (*prát*). He, who pronounces (*vivañi*), is the pronouncer (*vivác*): first the judge (*prád'vivác*) is interrogator, next pronouncer of judgment; an apposition in the form called *carmad'báraya*, as in the example, 'bathed and anointed.' Having first inquired all circumstances from the plaintiff, the judge (*prád'vivác*) himself pronounces what is proper: he is an officer of the king.

If it be alleged by the depositor, that a hundred *suvernas* were bailed, and it be proved by witnesses, or by any other popular proof, or by ordeal, that fifty *suvernas* were bailed, the following text shows what is to be done by the king in that case.

#### XLVIII.

MENU: — Regularly, a deposit should be produced, the same in kind and quantity as it was bailed, by the same and to the same person, by whom and from whom it was received, and before the same company, *who were witnesses to the deposit*: he, who mistates a deposit, ought to be fined.

THE depositor, who claims more, and the depositary, who acknowledges less than was deposited, ought to be fined. Such is the meaning according to the *Retnācara*; and in this CULLŪCABHATTA concurs. "Be-

oil, which he delivered into the hands of an oilman, saying, "keep this jar of oil for me." The oilman, suspecting from its great weight, that the vessel contained some metallick substance, took out the gold and silver, and filled up the vessel with oil. The soldier, returning, received back the jar of oil, and missing the gold and silver, demanded his property from the oilman. He replied, "this is the very jar of oil which was intrusted to me, take it away. I know not what it contained." The suit was carried before the king, who, after much investigation, told the oilman, "I will give an answer, after making trial of your honesty; let this wooden chest remain in your house one night, on your bringing it back in the morning, the question shall be decided." Placing in it a feasible and learned man furnished with paper, pen and ink, he delivered to the oilman a tall wooden chest, in the lid of which many holes were bored. The oilman, having received it, at night in conversation with his wife, said, "this king tries my honesty by depositing a thing of his own with me, and I fear a thief that, embezzling the king's deposit, I should incur punishment? Obtaining the king's confidence by restoring the chest with its contents in the morning, and cheating the soldier, I shall live in affluence upon the valuable property gained from him." The convicted spy wrote down the whole of this and the rest of their conversation. In the morning, the oilman being brought before him together with the chest, the king, informed of the whole circumstance by the spy, taken down by the man who was concealed in the chest, inflicted his punishment on the oilman, and compelled him to restore the effects to the soldier.

fore the same company" is mentioned to denote witnesses, but is merely an example: consequently the rule is the same, if the ascertainment be made by other popular proof, or by ordeal. He shall pay a fine equal to that part for which a falsehood was asserted; not, equal to the whole of the effects claimed, nor to the value of the thing *actually* deposited: for the offence is less.

### XLIX.

MENU:—SUCH is the mode of ascertaining the right in all these cases of a deposit: in the case of a deposit sealed up, the bailee shall incur no censure on the redelivery, unless he have *altered the seal, or taken out something*.

HE shall incur no censure if he have taken out nothing from a sealed deposit; but he shall incur censure, if he have taken out any thing: and, if he take out any thing from an open deposit, he shall incur no censure, if he afterwards restore it.

THE *Retnâcara*.

WE say, such is the mode of ascertaining the right and recovering the deposit, (namely the mode abovementioned XLVII 2) in all these cases of deposit (meaning generally all deposits, loans for use and the like): consequently, in the case of any deposit, or loan for use, if the depositary acknowledge the receipt of silver, and the depositor allege a bailment of gold; or if the contest regard the quantity; it shall be tried by the evidence of witnesses, by artifice, or the like, as directed by the former text (XLVII 2). But, in the case of a deposit sealed up, if it be proved, that the depositary did not break the seal, and, after taking out something, seal it up again, he shall incur no censure or disgrace. Herein CULLU'CABHATTA concurs.\*

L.

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\* THE compiler takes occasion to insert in his text another popular tale. A rich man placed in the house of a friend two jars filled with effects, having closed the mouth of each jar with lac, on which his own seal was impressed. Some time after his death, his son, inspecting his father's notes of his income and expenditure and of the disposal of his property, and finding a note of those two jars, claimed them: and the depositary accordingly restored them. The owner's son, opening both vessels, found gold coins in one, and pieces of iron in the other. Upon this he addressed the depositary; "were pieces of iron to thee by my father? Restore to me the gold coins." The other replied: "both jars

**MENU:—**THUS let the king decide causes concerning a deposit, or a friendly loan for use, without showing rigour to the depositary.

IN the mode before directed, without showing rigour to the supposed depositary. So the *Retnācara*. The gloss of CULLU'CABHATTA is similar.

By this it is expressed, that, in ascertaining the right in the case of a deposit, rigour, and deceit and other expedients propounded by VR ĪHASPATI, shall not be employed against the supposed depositary, as in ascertaining the right and so forth in cases of debt. If it cannot be ascertained by popular proof, such as the evidence of witnesses and the like, it shall be tried by ordeal (XIII). Proof by ordeal is directed for both parties, the supposed depositor and the supposed depositary: so the text is explained in the *Retnācara*. Consequently, in a suit, wherein one party alleges a deposit, which the other denies, ordeal is ordained to determine the right: to answer the question, whether the supposed depositor or depositary shall submit to ordeal, the text directs both parties, *that is, either party*. In this case the rule is, that ordeal shall be performed by whichever party appears to surpass the other in honesty; it is not positively required, that ordeal be performed by the party accused. In cases of bailment for delivery, loans for use, and the like, the trial by ordeal on failure of evidence, the decision, and the amercement, shall *in general* be the same as in the case of any other deposit (XI). but a distinct fine is mentioned in the case of a loan for use.

## LI.

*Mat'sya purāna:—*He, who, having received a loan for use, does not restore it as he ought, shall be compelled to re-

were marked with the father's seal; I know nothing of their contents." The dispute being referred to arbitrators, these insisted on seeing the bag, on which was the impression of his father's seal, broken into pieces, and the depositors for effecting "this seal was made by some animal, not by my father." After rejecting, the arbitrator weighed the pieces of iron and the gold coins, and finding the weight of both equal, and seeing by the owner's notes of the disposal of his estate, that two *sara* were indeed applied in the depositary's house, they determined, that the pieces of iron were *probably* placed so near to the weight of the gold, and thus the parties were reconciled. Therefore, adds the author, in the case of a sealed deposit, the seal should be broken before witnesses, or the thing should be sealed and carry with it a mark of its contents.

tore it by harsh reproof, or shall be fined in the first amercement.

IT is here denoted, according to CHANDE'SWARA, that, if a loan for use be not restored, the fine shall not be equal to the value of the thing, but equal to the first amercement; for, nowhere otherwise explaining the text of CA'TYA'YANA (XLII), he cites this text, which directs the first amercement, immediately after the text of CA'TYA'YANA.

THE reconciling of these texts, by discriminating the degrees of virtue in the depositary, is proper, as well as the texts of several pages, which direct, that a man, who embezzles a deposit, shall be punished like a thief, or pay a fine equal to the value of the thing, and the like. As the law of deposits in general is fitly extended to loans for use, and the first amercement is, in some cases, the punishment of a thief, we hold, that this text refers to those cases. The first amercement is propounded by MENU : " now two hundred and fifty *panas* are declared to be the first or lowest amercement ;" and it has been often explained.

As a deposit, whether sealed or open, may not be redelivered to sons or the rest, so a loan for use may not be redelivered to them, while sent the owner lives : why should it be otherwise ? But with the owner's consent it may be delivered to sons and the rest, and even to a stranger.

## LII.

VRĪHASPATI :—HE offends not, if he deliver a thing borrowed for use, *to another person*, with the consent of the owner.

SUPPLIED from the gloss of the *Retnācara* : and common sense extends this very rule to open deposits and the rest. But the owner's consent should be attested ; otherwise, a subsequent contest would not be obviated.

IF the thing, borrowed for use, be lost by accident after the expiration of the period for which it was borrowed, an equivalent must be given : for the case is similar to that of a bailment with an artist.

## LIII.

CA'TYA'YANA:—IF the artist keep the thing bailed, after the time agreed on for working it into ornaments and the like, he shall be forced to pay its value, even though it be destroyed by the act of God.

2. WHAT is destroyed by his own act is lost to the hired artist, and shall be made good even earlier than the time stipulated; but if he have tendered it, it is lost to the owner who did not accept it.

“ THE time agreed on;” the number of days appointed as the period for working the thing bailed into ornaments or the like. “ The thing bailed;” the bailment with an artist. After the time for which it was received; that is, received on a promise to deliver ornaments at the expiration of ten days, or other similar promise. If the artist keep the thing after that time, beyond the stipulated period, he shall be forced to make it good, even though it be destroyed by the act of God or of the king. Such is the meaning of the first text. What is destroyed by an act contrary to the owner's requisition, shall be made good to the owner by the hired artist, even earlier than the stipulated time; but, if he tender the thing finished in the mode directed, and the owner do not accept it, and it be afterwards destroyed by the act of God, it shall not be made good to the owner by the hired artist.

The Retnāvara.

THE meaning of this gloss is, that, where ornaments or the like are intrusted to an artist, for repair; in that case, if the artist, from his own conceit, without the assent of the owner, attempt to remake the unbroken parts; and the ornaments, happening to be old, are destroyed; the artist shall pay the value, or deliver an equivalent to the owner, even earlier than the time agreed on for repairing the ornaments.

OTHERS, interpreting “ hired ” to mean in this place artist, and reading “ in the case of a thing destroyed by his act,” explain “ act,” work different

different from that directed by the owner; and supply the words "*bailed to an artist*:" and the interpretation is this; "in the case of a thing bailed to an artist, and injured by his acting inconsistently with the owner's directions, the artist *shall be forced to pay its value*;" for this is inferred from what preceded. Consequently, if a part, however small, of the thing in question be broken by working on the part directed by the owner, it must be restored to its former condition; that is, the loss falls on the artist.

THE last hemistich of the *second* verse conveys this sense; if the artist, having finished the work on those parts, for which the thing was intrusted to him, tender it to the owner, and he do not receive it, saying, "let it remain for the present," or desiring the work to be done in another manner, it is the owner's loss: that is, it shall not be made good by the artist. But if the artist, agreeing to do the work in another manner, fixed a time, then, should that agreement be infringed, the fault is his.

SHOULD it be contested by the owner, that he had directed different work; and by the artist, that the very work directed was performed; in this case, the artist, even though he had tendered the thing, shall be compelled to pay its value, if it be proved that different work had been directed; but not otherwise. And in every case he shall be forced to pay its value, if he had not tendered it.

HERE learn incidentally what is to be done by the owner. In a case, where the form of the work is disputed, let him first receive his own chattel, and afterwards contest the matter, at the time of paying the artist's wages. If the artist will not deliver the thing without receiving his wages, it is no tender; in this case, witnesses should be taken. When the cause is tried at a subsequent time, the right of one party being ascertained by evidence or by ordeal, whoever is cast in the suit, the loss shall be his, even though the thing have been lost by accident. If the wages have been already paid, or it be suspected, that the thing has been changed, let the owner instantly apply to the king or his officer, or take witnesses as abovementioned.

THIS and other points should be understood in the case of a thing seized

by the king or the like, as well as in the case of a thing lost by the act of God: and the same also, according to circumstances, if gold, silver, or like, be bailed for working into new ornaments.

## LIV.

VRĪHASPATI:—If the loss be *occasioned* by the defects of the thing bailed, the artist shall not be compelled to make good; but if the loss happen by the artist's fault, he shall be compelled to make good what was intrusted to him for repair, *or for work*.

IN the case of a loss caused by the defects of the thing bailed, (if it unfit to bear the heat of the fire or operation, of cutting and hammering, consequence of its being very old,) there is no fault in the artist: for example; where a gun is to be repaired, of which the wood or the iron is found too weak, in consequence of its being very old. Otherwise, it is the artist's fault, if it be destroyed by a pin driven through it, or the like: for example, if the gun be broken, where the wood and iron are joined, by a stroke of a hammer in a wrong place: and so in other cases.

## LV.

VRĪHASPATI:—If the property of another, bailed by the mode called *nyāsa* and the rest, be consumed, or neglected and lost even without design, the bailee himself is the man who must make them good.

NOT his son, wife, or other heir. But if lost by the fault of the heir he shall be compelled to make it good; so the text is explained in the *Retnācara*.

SINCE a deposit, consumed by the depositary, is equal to a debt, it ought to be recovered from the son or other heir: but this distinction is not mentioned by any sage; and it has only been so settled by authors. If the deposit be lost by the depositary, it shall not be recovered from his son or other heir; but if lost by his son or other heir, while the depositary

alive, it shall be recovered from that heir : or it may be recovered from the father, since the son's loss may be admitted to be the father's loss, in the same manner as the law directs (Ch. IV, v. LVI), that the gain, made by a son before partition, is the father's. If it be destroyed by a stranger, it is considered as the act of God : and the thing shall not be recovered from the depositary ; but, from that stranger. This is to be inferred from common sense, and from the text of CA'TYA'YANA (XXVII 2).

SHOULD the depositary lend to another the thing bailed, what is the rule in that case ? It is answered, if he lend it by consent of the owner, the gain and the loss are the depositor's : and this is controverted by none. He ought not to lend it, without the owner's consent : but, if he do lend it inadvertently, the gain is the owner's ; for he only has property in the thing ; and the depositary, like a box or the like, is merely the holder of it. If the loan be lost by the death or insolvency of the debtor, the deposit must be made good by the depositary ; since it was lost by the fault committed by him in lending it. Neither a gift, a sale, nor other alienation by the depositary is valid, as will be mentioned under their respective titles. Thus may the law be concisely stated.

ACCORDING to the opinion of those, who admit a thief's property in the thing stolen, the bailment of effects stolen is valid. *Let the reader draw his own inferences on this and other topics.*



## CHAPTER II.

## ON SALE WITHOUT OWNERSHIP.

## SECTION I.

## ON THE AVOIDANCE OF SALE WITHOUT OWNERSHIP.

## I.

VRĪHASPATI:—AFTER bailments, sale without ownership has been propounded by BHRIGU: listen attentively to that law, which I promulge together with the particulars regarding the production of the seller and the justification of the buyer.

. If the depositary sell the thing bailed; what shall be the consequence? In answer to this question, the law on sale without ownership is adduced. To this order of promulgation, BHRIGU also assents. " Together with the particulars" relative to the production of the seller, the justification of the buyer, and so forth. Under this title he first defines sale without ownership.

## II.

VRĪHASPATI:—HE, who clandestinely sells an open deposit, a thing bailed for delivery, a sealed deposit, effects stolen, a pledge, or a thing borrowed for use, or bailed to an artist, or the like, is considered as selling without ownership.

\* CLANDESTINELY;" in secret.

A CHATTEL belonging to the man himself, delivered to another without transferring the property, is a deposit. When one intrusts his own effects to another, through the intervention of a third, the chattel so intrusted to an intermediate person is a deposit for delivery. All this must be understood as already explained. A thing intrusted under seal is a sealed deposit: both sorts are mentioned, as a priest and a mendicant *are distinguished*. "Stolen;" seized by thieves. "A pledge;" a thing hypothecated. "A thing borrowed for use;" ornaments or the like asked and obtained for decoration and so forth. This is general, comprehending bailments with artists and so forth. He, by whom such a thing is sold, is a non-owner. Such is the meaning of the text. Consequently the sale, effected by him, is sale without ownership. This must be understood as the import of the text; otherwise, the establishing of a technical sense for the word *afwàmi* (non-owner) would be superfluous, since any other than the owner, whether a depositary or not a depositary, whether a seller or not a seller, has no ownership. But now there is no difficulty in explaining the term "non-owner" as employed to denote sale without ownership.

### III:

NA'REDA:—WHEN a thing bailed, or the goods of another lost by him and found by a stranger, or effects stolen, are clandestinely sold, it must be considered as a sale without ownership.

THE intrusting of one's own effects to another is bailment as defined by NA'REDA. It comprehends loans for use and the rest, conformably with the sense of the verb *nibessép*, bail or intrust; the law of bailments having been extended to loans for use (Chap. I, v. III & XI); for there is no difficulty in extending the laws promulged under the title of sale without ownership to these trusts, by the comprehensive sense of the pronoun "it." "Lost;" missed by the owner. The text must be so supplied. Some person, travelling on a road, drops a thing, which is not recovered though diligently sought; in such cases, the thing is lost, but not abandoned by the owner; consequently it is not a waif. When that thing is found and sold by any person, it is sale without ownership: and so, when a thing is sold,

which

which had been stolen, or taken by fraud or force, in the day or night, from the owner's house, without his consent.

THE relative (III) belongs to the action : consequently that sale, which is made by a non-owner, is a sale without ownership ; the term "*sale*" being taken in the neuter sense. Or the relative belongs in construction to the goods of another which are sold : consequently that chattel, appertaining to another, which is *thus* sold, is a sale, or thing sold, without ownership ; the word "*sale*" being taken in the passive sense : and many so explain the text.

#### IV.

VYĀSA :—WHEN the goods of another are sold in the owner's absence *whether they had been* borrowed for use, bailed for delivery, deposited under seal, or stolen, it is a sale without ownership.

IN this text the pronoun stands in the masculine gender, because *sale* is masculine ; as in a former text concerning secret bailments (Ch. I, v. VI) where neither the thing nor the act of depositing it, which might be intended by the pronoun, is masculine, but the word bailment (*ryāśa*) only is masculine. Any property of another, which is sold in the absence of the owner, whether it had been borrowed for use, bailed for delivery, or secretly deposited, or the property of another seized or stolen, which is thus sold, is a sale, or thing sold without ownership : but according to a former opinion, the sale of the chattel, which is thus sold, though it belongs to another, is sale without ownership. The difference in the construction of the text arises on the word "it" referred to the sale, or to the thing sold. Or even on this opinion, the seeming difficulty may be reconciled as before.

"CLANDESTINELY," in the preceding texts (II and III), denotes the want of the owner's assent. Consequently, if the owner assent, a sale made even by one, who is not owner, is valid : and such is the current practice.

#### V.

MENU :—HIM, who sells the property of another man, without

out the assent of the owner, the judge shall not admit as a competent witness, but shall treat as a thief, who pretends that he has committed no theft.

TREATING him, who sells the property of another man, unauthorized by the owner, as one who is in fact a thief, but pretends he has committed no theft, the judge shall not admit him as a competent witness; that is, he shall never admit his evidence.

CULLU'CABHATTA.

BUT his punishment will be mentioned in another text.

THE term of " sale without ownership" must be taken in its derivative sense, a sale made by one, who is not owner; for MENU, the highest authority of memorial law, does not specify deposits and the like, in ordaining, that he, who sells another's property, shall not be admitted as a competent witness; and it is irregular to establish another acceptance, when the derivative sense is apposite: and further, in the text of VRĪHASPATI (II) and the rest, deposits and the like are only mentioned illustratively: thus, should any powerful person sell a tree or the like, which belongs to some weaker man, pretending that it is his; on its afterwards appearing from a judicial procedure, that he was not the owner, it is *beld* a sale without ownership.

If any one of the parceners sell property which was inherited by five brothers on the death of their father, is it not a sale without ownership? and is not this inconsistent with the opinion delivered by authors in explaining the following text; namely, that the gift, *or sale*, ought not to be made; but if made, is valid?

## VI.

VYĀSA:—A SINGLE parcener ought not, without the consent of his coparceners, to sell or give away immovable property of any sort which the family hold in coparcenary.

It should not be argued, that, each of the five brothers having dominion over that property, a sale by a single parcener is not a sale without ownership. The separate dominion of the five brothers over the same property is not admissible, according to the opinion of JĪMU'TA-VA'HANA. Nor should it be argued, that, according to his opinion, the dominion of each is established over the property, which each enjoys, or which each will receive when a partition is made: and thus the property sold by the parcener was actually his; and consequently there is no difficulty. Were it so, another parcener could not share the price of that property. It is not proper to affirm, as consistent with the opinion of JĪMU'TA-VA'HANA, that other parceners have no share in the price of undivided property sold by a brother, with whom partition has not been made; but, according to the opinion of lawyers, who contend for the common title of all the brethren in the whole of the wealth, surely they are all entitled to a share.

To the question thus proposed it is answered, the term joint wealth, according to the opinion of JĪMU'TA-VA'HANA, should be used for what is brought into one common tenure; when such property is sold by any one of the parceners, the price of it is joint property; and in that case, what is enjoyed by each, becomes the property of each. Thus is the law demonstrated. And in this case, there is no punishment; nor is there a sale without ownership ascertained by proof, that another's property has been sold; since it is not certain, whether the seller is, or is not, the owner: the sale is therefore valid.

It should not be objected, that a moral offence is committed, since, there is in fact a want of ownership. That is admissible; a moral offence is even denoted by the expression, "ought not to be made;" and the sale of joint property is forbidden, merely in the apprehension of a moral offence. In fact the price of property, sold by any one of the parceners, is enjoyed in common by all. To whom that property, which is sold, did belong, cannot well be determined, according to the opinion of JĪMU'TA-VA'HANA: the dominion of all the parceners over it must be asserted, like their property in a single horse or the like.

THE opinion of VA'CHESPATI BHATTA'CHARYA may be admitted upon the reason of the law : if the whole of the joint property be sold by one of the parceners, the sale is not valid, so far as regards the shares of the other parceners ; but is valid so far as regards the seller's own share : and if it be sold with the consent of the coparceners, the sale of the whole is valid. This will be made evident under the title of subtraction of what has been given.

SHOULD a creditor, selling a pledge, apply the produce to the payment of his own debts, what is the law in that case ; for he has no property in the pledge ? It is not *universally so*. But if he sell it before the period ordained under the title of loans and payment, the sale is not valid.

## VII.

MENU : — NOR, after a great length of time, can he give or sell such a pledge.\*

BUT he becomes the owner of the pledge at the appointed time.

## VIII.

VRĪHASPATI : — AFTER the time for payment has past, and when interest ceases, the creditor shall be owner of the pledge.†

AND again,

## IX.

VRĪHASPATI : — WHEN the debt is doubled by the interest, and the debtor is either dead or has absconded, the creditor may take his pledge, and sell it before witnesses.‡

If the creditor become owner of the pledge, how can the expression of

\* Book I, v. CXVII. The text would admit of a different interpretation, which seems to be here intended.

† Book I, v. CXV.

‡ Book I, v. CXXI.

VRĪHASPATI be pertinent (having received the amount of his debt, he must relinquish the balance \*)? For this directs, that the remainder shall be relinquished; now there is no relinquishment of any part of the price, when a man sells his own property. It must be understood, that the text above cited (VIII) denotes property in a certain part proportioned to the amount of the debt. Or the creditor becomes owner of the whole pledge, if the agreement were in this form, "should I not redeem the pledge, when the debt is doubled, it shall become thy property;" or thus, "should I not redeem it in five years, it shall become thy sole property." But if the agreement run not in such form, the property extends only to a part of the pledge proportionate to the debt. The text bears both senses.

WHEN a piece of land measuring a thousand cubits, or when twenty trees, have been pledged without an agreement in such form, if the debt can be liquidated by the sale of half the pledge, shall the whole be sold or not? It is answered, the whole should not be sold; for the sale is only directed for the payment of the debt. It should not be objected, that, were it so, the text, directing the relinquishment of the remainder, would be unmeaning. When a single copper vessel or the like has been pawned, since a part of it cannot be sold, the sale of the whole is necessary; and it is necessary, that a part of the price (namely the surplus) should be relinquished. Nor should it be argued, that, were it so, the creditor being owner of a part only, the sale of the other part would be a sale without ownership. Like the case of undivided brethren, a partial ownership, without property in the whole, is incongruous.

WHAT then is this partial ownership? It should not be called a concurrent property contemporary with the property vested in the debtor or in his heir: for in that case each would be equally entitled to half the pledge. This is concisely answered by establishing an ownership, on the authority of the law, in a greater or less value, according to circumstances.

WHEN the king causes the property of any person to be sold, what is the law in that case? Why does the king cause it to be sold? By an act of

violence ; or for the payment of a fine, or of a debt ? In the first case the sale is not valid.

## X.

**MENU:—**WHAT is given by force, what is by force enjoyed, by force caused to be written, and all other things done by force, MENU has pronounced void.

IN the second case, if he do not cause the property to be sold, how can the amercement or debt be recovered ? It should not be objected, that there is no occasion for his making the sale himself, since the purpose may also be effected by selling the property through *the* intervention of *the* owner. It is inconsistent with settled usage to suppose an offence in selling the property in the owner's presence, if he refuse to cause it to be sold. Nor is it void, as a thing done by force ; for what is done by force without a *sufficient* cause, is alone void ; and fines could not otherwise be recovered.

SOME ground the validity of a sale made by the king, on his being lord of all, as declared by the text, " All subjects are dependent, the king *alone* is independent." But, were it so, the king's interest and the buyer's interest in the thing would be equal ; and therefore the subject's right could not be vindicated : and further, the sense positively is, that the sale of the owner's property ought to be made by the king with the owner's consent. But, if that owner do not consent to the sale of his effects for the payment of a just due, let the king compel him to consent, by blows, or harsh reproof, or other modes authorized by the law. Or, should he persist in his refusal, a reasonable punishment, for the offence of not assenting where assent is required, is proper.

BUT if the king, being much hurried, sell the effects without requiring the owner's attendance, and the owner, afterwards attending, contumaciously refuse to pay what was due, or to acknowledge the validity of the sale, then that contumacious person shall be compelled by harsh reproof, or other suitable mode, to admit the sale.

BUT



BUT should he attend and pay what was due, how can the sale be valid? The king cannot employ violence to render the sale valid; for an acknowledgment extorted by force would, in this case, be void (VIII): that is, it would be void in the case of a payment, for which no time was stipulated. But, if a period had been stipulated, and his conduct be contumacious after the period has expired, what has been already said concerning the sale of a pledge, is equally applicable to this case.

THE sale of a pledge may be valid, because it is a thing actually possessed; how can other effects, remaining in the owner's house, be sold by the king's permission? It should not be argued, that the sale is valid, because it is made by a person not destitute of authority, the king being lord of all, and the text of MENU merely declaring void a contract made by a person without authority. CULLUÇABHATTA expounds "a person without authority," a person not authorized by the father or by the brethren.

## XI.

**MENU:—**A CONTRACT made by a person intoxicated or insane, or grievously disordered, or wholly dependent, by an infant or a decrepit old man, or by a person without authority, is utterly null.

THE law ordains, that the king shall not cause the property of another to be sold: but he shall enforce payment of a debt, or the like: and the meaning is, that he shall induce the debtor to discharge it.

How can the property of another, received in pawn, be enjoyed as a forfeited pledge, with the king's consent, under the words of the text cited in the preceding book (Book I, v. CXX)? and how can the goods of another be sold by the king's directions, under the authority of another text (Book I, v. CXXII)? For the goods, though actually possessed, are the property of another.

IF the debtor do not redeem the pledge at the stipulated time, it is not required that the creditor should keep the pledge; for the law shows, that  
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the debtor's property in it is forfeited by his neglect. Let the creditor enjoy it, or cause it to be sold, previously acquainting the king for the sake of respect, or of justifying the act. To this construction there is no objection: and if this exposition be proposed, it is admissible.

If a time were stipulated, the sale of the effects, with the owner's consent, is valid in law. Therefore it is consistent with the reason of the law, that, after the stipulated period has expired, sufficient effects should be attached to provide for the payment of what is due from a person who has absconded, and that they should be sold after a *reasonable* delay. But there is a distinction in respect to land.

*Disquisition on property in the soil.*

THIS earth, created by GOD, became the wife of PRĪT'IV; and afterwards, by marriage and otherwise, became the property of several princes,

XII.

*Nerastinha purāna*: — THRICE seven times exterminating the military tribe, PARASU RA'MA gave the earth to CASYAPA, as a gratuity for the sacrifice of a horse.

By conquest, the earth became the property of the holy PARASU RA'MA; by gift, the property of the sage CASYAPA; and, committed by him to *Cshatriyas* for the sake of protection, became their protective property successively held by powerful conquerors, and not by subjects cultivating the soil.

BUT annual property is acquired by subjects on payment of annual revenue: and the king cannot lawfully give, sell, or dispose of the land to another for that year. But if the agreement be in this form, "you shall enjoy it for years;" for as many years as the property is granted, during so many years the king should never give, sell, or dispose of it to another. Yet if the subject pay not the revenue, the grant, being conditional, is annulled by the breach of the condition; and the king may grant it to another.

BUT if no special agreement be made, and another person, desirous of obtaining

ing the land, stipulate a greater revenue, it may be granted to him on his application. Here reasoning must be adduced. For example, the following ; it must of necessity be affirmed, that the cultivator has not an absolute property in the land ; otherwise, the cultivator would take the sixth part of the produce of unclaimed land, which has been obtained as such by another.

### XIII.

YA'JNYAWALCYA :—LET the king, receiving unclaimed property, give half to *Bráhmans* ; but a learned *Bráhmāna* may keep the whole, for he is lord of all.

2. AND the king shall receive a sixth part of unclaimed property occupied by any other person.

If the king himself receive unowned property any where situated, let him give half to *Bráhmans* ; for the word *dwija* or *twice born* here signifies the *Bráhmāna*, as is shown by the subsequent expression “ he is lord of all ;” since no twice-born man, except the king and the *Bráhmāna*, is lord of all ; and *MENU* declares the dominion of the king and the priest over the human species (XXIV). A learned *Bráhmāna*, occupying unowned property, may keep the whole. But any other than a *Bráhmāna* or king, occupying unowned property, must give a sixth part to the king ; and may take the remainder himself.

MUST the king, receiving from a subject the sixth part of unclaimed property, give half to the priest ? The answer is, unclaimed property denoting a thing which has no owner, and, when it is occupied by a private person, the property by occupancy altering the condition of that thing, the king does not in this case receive unclaimed property ; therefore half need not be given to the priest.

SINCE the word king here denotes lord of the soil ; and since the cultivator, being owner of that land, is *so far* equal to the king ; he would be entitled to the sixth part of the unowned property occupied by him. *The answer is*, the word king may be explained lord of the soil to exclude another king : but a royal property

property is supposed in the use of the word ; the cultivator has a subordinate usufructuary property, not a royal property : and SRI' CRISHNA TERCA'LANCA'RA thinks there may be, in the same land, property of various kinds, vesting in the king, the subject, and so forth. It should not be objected, if that be the case, why cannot the king give the land to another, in the same year *for which revenue is paid*? Because a seller or giver may, by sale or gift, annul his own property, and invest another with similar property, but cannot create property of another nature (for a sale by a subject cannot create property of another nature, namely royal property ;) therefore, usufructuary property being raised by a conditional gift to the subject, the king cannot again create property *in the same thing*, by a gift to another.

BUT whence is it deduced, that such property vests in the cultivator? There is no proof of it. His property is not by occupancy ; for, the king being a more powerful owner, his occupancy cannot be maintained : it is not by sale ; for no sale has been made : it is not by gift from the king on condition of revenue ; for, were it so, his property would be equal to the king's.

IF it be said, the king, satisfied with the receipt of revenue, does not oppose a property by occupancy ; the answer is, in that case the property would remain, if the husbandman, not having surrendered that land, stay even in a distant country ; and thus the land could not be taken by another person. It is not fit, that, property being established by occupancy while the king was satisfied, he should, afterwards becoming dissatisfied, have power to annul the occupancy or property ; for occupancy, having created a property, immediately ceases *to be a mere occupancy* ; and property cannot be annulled without the assent of the owner.

SOME hold, that the subject is invested with ownership by a gift from the king on condition of revenue. If he go elsewhere and revenue be not paid, the gift is cancelled by the breach of the condition. It should not be objected, that his interest in the land would be equal to the king's ; for the king's assent is not *given* in such a form. Thus, the king assenting in these words, " let a subordinate usufructuary property be held by thee, while my property remains in this land, which belongs to me ;" such property is created, as is described

by the terms of his assent. Nor should it be objected, that in this case property is not created, nor is effect given to an existent property, but mere possession as of a thing pawned. This would be inconsistent with the explanation of husbandman, as given by CHANDE'SWARA and others; that is, "owner of the field." Nor should it be objected; how can there be property in what is already owned, since property resists a concurrent property? SRI' CRISHNA TERCA'LANCA'RA and others hold, that property prevents concurrent property of the same nature only: and, under the text which declares wealth common to the husband and wife,\* the wife has property, even while the husband's title subsists. If it be argued, that, in short, property generally prevents a concurrent property; and the text, which declares wealth common to the husband and wife, merely authorizes her substitution for the duties of hospitality and the like; and the difficulty being thus removed, there is not, in the case supposed, any property vested in subjects: then the husbandman would only receive half the produce of the soil, since the king would be entitled to enjoy the proportion, to which *the owner of the soil* is entitled. If it be argued, that, obtaining the land by payment of revenue, as a wife is obtained by a nuptial gift, he, who raises produce from his own seed, is entitled to that produce: even in that case, as a thing hypothecated to one person cannot be also hypothecated to another, so possession of land, already possessed by one person, cannot properly be given to another. A specific agreement should be made, when the land is delivered, that it shall be enjoyed year by year, until a greater revenue be offered by another person.

#### XIV.

MENU:—HAVING ascertained the rates of purchase and sale, *the length of the way, the expenses of food and of condiments, the charges of securing the goods carried, and the neat profits of trade, let the king oblige traders to pay taxes on their saleable commodities:*

2. After full consideration, let a king so levy those taxes continually in his dominions, that both he and the merchant may receive a just compensation for their several acts.

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\* Book V, v. CCCCXV.

3. As the leech, the suckling calf, and the bee, take their natural food by little and little, thus must a king draw from his dominions an annual revenue.
4. Of cattle, of gems, of gold and silver, *added each year to the capital stock*, a fiftieth part may be taken by the king; of grain, an eighth part, a sixth, or a twelfth.
5. He may also take a sixth part of the clear annual increase of trees, flesh-meat, honey, clarified butter, perfumes, medical substances, liquids, flowers, roots, and fruit,
6. Of gathered leaves, potherbs, grass, utensils made with leather or cane, earthen pots, and all things made of stone.
7. A KING, even though dying *with want*, must not receive any tax from a *Bráhmāna*, learned in the *Védas*, nor suffer such a *Bráhmāna*, residing in his territories, to be afflicted with hunger:
8. Of that king, in whose dominion a learned *Bráhmāna* is afflicted with hunger, the whole kingdom will in a short time be afflicted with famine.
9. THE king, having ascertained his knowledge of scripture and good morals, must allot him a suitable maintenance, and protect him on all sides, as a father protects his own son:
10. By that religious duty, which such a *Bráhmāna* performs each day, under the full protection of the sovereign, the life, wealth, and dominions of his protector shall be greatly increased.
11. LET the king order a mere trifle to be paid, in the name

name of the annual tax, by the meaner inhabitants of his realm, who subsist by petty traffick :

12. By low handicraftsmen, artificers, and fervile men, who support themselves by labour, the king may cause work to be done for a day in each month.
13. LET him not cut up his own root *by taking no revenue*, nor the root of other men by excess of covetousness ; for, by cutting up his own root *and theirs*, he makes both himself and them wretched.

LET him levy taxes on traders, who subsist by purchasing commodities cheap and vending them at an advanced price. What taxes ? to this the legislator replies, having ascertained the rates at which commodities are purchased, and at which they are sold ; and having ascertained the profit, with the charges of travelling, of subsistence, of transport, and of safeguard after importation ; let him levy taxes : that is, let him take the due proportion of the sum which remains after defraying all charges. RAGHUNANDANA expounds the terms of the text (*yógasbēma*) transport of goods to be imported, and safeguard after importation. Let the king so act, that he also may receive benefit out of the profits of trade *which remain* after defraying charges ; and that the merchant may receive just compensation for his labours.

#### XV.

PARASARA:—LET the king gather blossom after blossom, like the florist in the garden, and not extirpate the plant, like a burner of charcoal.

As the florist in the garden plucks blossoms successively put forth, and does not eradicate the flowering shrub ; so should the king, drawing revenue from his subjects, take the sixth part of the actual produce : but the maker of charcoal, extirpating the tree, burns the whole plant ; let not the king so treat his subjects.

MA'D'HAVA.

XVI.

## XVI.

The *Mahábhárata* :—LET the king gently draw revenue from his dominions, as the leech takes its natural food by little and little.

THE fiftieth part, and other proportions of the profit gained by commerce, must be understood generally of all profit ; for no distinction is mentioned.

## XVII.

VRĪHASPATI :—GIVING a sixth part to the king, a twenty first part to deities, and a thirtieth part to priests, a man offends not by applying himself to agriculture.

FROM the concurrence of this text, and no distinction being mentioned, this very rule must apply to the receipt of a part of the gain in all cases : and MA'N'HAVA places the text of MENU under the title of revenue in general.

“ OF grain, an eighth part, a sixth, or a twelfth :” *Three* rates, primary and secondary, for the difference of circumstances. Consequently, a greater revenue is permitted in the exigence of distress. But never shall any tax be received from a *Bráhmāna* learned in the *Védas* (XIV 7). Shall not the king prevent his cultivating land ; and thus there will be no revenue to receive from him ? The text declares it infamous, that such a *Bráhmāna* should be afflicted with hunger (XIV 8). Therefore the king should assign a suitable maintenance to a learned *Bráhmāna*, who has not a maintenance already allotted to him. To confirm this, MENU himself adds ; “ the king, having ascertained his knowledge of scripture and good morals, must allot him a suitable maintenance ;” that is, such a maintenance as may exempt him from falling into contempt. Do not the subjects pay a sixth part as a token of respect because the king protects them ? And, if the *Bráhmāna*s learned in the *Védas* pay not a sixth part, shall not the king protect him ? To those who entertain this doubt, the sage replies ; “ the king must protect him on all sides,” from thieves and others, not in words merely, but with exertion of mind and body, as a father protects his son.



To the doubt abovementioned, founded on the mistaken notion that such a *Bráhmāna* does not give a sixth part, is it not answered, that he, who raises produce, or buys and sells things, gives a part of them; and, as the *Bráhmāna*, learned in the *Vēdas*, acquires merit, of which he gives a part, he also must necessarily be protected by the king?

## XVIII.

The divine CÁLIDASA :—THE wealth of princes, collected from the four orders of their subjects, is perishable; but pious men give us a sixth part of the fruits of their piety; fruits, which will never perish.\*

How does it follow, that *Bráhmanas* learned in the *Vēdas* give the sixth part required by the text of VRĪ IASPATI? The text cannot be well explained by the gift of a part of the fruits of piety; for that is inconsistent with the concurrent gift of a part to deities and priests. Some refer the text (XVII) to others than a *Bráhmāna*; but that is not the opinion of MA'D'HAVA; for immediately after that text, he mentions the mode in which agriculture may be practised by a *Bráhmāna*, and quotes a text of MENU concerning the practice of husbandry by *Cshatriyas* and others. The difficulty may be thus briefly reconciled; if a *Bráhmāna* learned in the *Vēdas*, for his own justification, voluntarily pay revenue, let the king, receiving it, appropriate it to the use of deities and priests; but, if he pay it not spontaneously, the king must not demand it.

THE sixth part is explained by MA'D'HAVA, one part in six. By parity of reasoning the rule is the same in respect of the thirtieth part.

## XIX.

MENU :—A SIXTH part of the reward for virtuous deeds, performed by the whole people, belongs to the king, who protects them; but, if he protect them not, a sixth part of their iniquity lights on him.

\* *Sacentalis*, p. 41, Calcutta edition

UNDER this text, which includes all classes, the king, who protects his subjects, receives a sixth part of *the reward* for virtuous deeds performed by them, although they also pay revenue. What parity is there in comparison with the *Bráhmāna* learned in the *Vēdas*, since the people at large give part both of the wealth and merit acquired by them? It must be understood, that the contribution is equal, or even greater, since a virtuous *Bráhmāna* learned in the *Vēdas*, acquiring great merit, gives a *part of a great reward* for many virtuous deeds. A *Srótṛiya*, or *Bráhmāna* learned in the *Vēdas*, is thus described;

## XX.

DE'VALA:—A PRIEST, who has studied one *śac'há* of the *Vēda*, or one *śac'há* with the law of sacrifice, or with the six *angas* or bodies of learning, and who performs the six prescribed acts, is named *Srótṛiya* learned in law.

THE six *angas*, or bodies of learning, are *śic'hā*, *calpa*, *vyācarana*, *ch'bandas*, *jōtiṣ*, and *nirukṭi*\*. The prescribed acts are declared in the following text.

## XXI.

MENU:—READING the *Vēdas*, and teaching *others* to read them, sacrificing, and assisting *others* to sacrifice, giving to the poor, if themselves have enough, and accepting gifts from the virtuous, if themselves are poor, are the six prescribed acts of the first born class.

LET it not be supposed, that an ignorant *Bráhmāna* is not to be respected; for MENU, premising, that a king, though in the greatest distress, should not provoke *Bráhmānas* to anger, declares the danger of provoking even an ignorant *Bráhmāna*.

## XXII.

MENU:—A *Bráhmāna*, whether learned or ignorant, is a

\* *Śic'hā*, composition of vocal for *śi*. *Calpa*, detail of religious acts and ceremonies. *Vyācarana*, grammar. *Ch'banda*, festival. *Jōtiṣ*, astrology. *Nirukṭi*, on the signification of difficult words and phrases. *Ata*, &c. *Ref. and* vol. I. p. 347.

powerful divinity ; even as fire is a powerful divinity, whether consecrated or popular.

“ LET the king order a mere trifle to be paid ” (XIV 11) by the meaner inhabitants of his realm (inferior in rank to the priest), who subsist by cultivation and other modes before mentioned, or by handicraft and the like not previously mentioned. Another contribution from handicraftsmen and artificers is mentioned in the subsequent text (XIV 12). Thus some expound the text (XIV 11). But in fact the term, used in the text, intends *petty* traffick and the profession of a singer and the like. In the subsequent text labourers, such as thatchers of houses and others, and artificers subsisting by work in cane and wood, are intended : as a distinction might be supposed between persons subsisting by labour or handicraft only, and persons subsisting by the sale of the produce of their labour, both are mentioned ; but in fact the terms are synonymous in the dictionary of AMERA. “ By these and by servile men, the king may cause work to be done for a day in each month,” employing handicraftsmen and artificers in thatching houses, and in working on cane and wood, and employing *Sûdras* on servile labour. It is necessary they should contribute revenue : to lighten the labour, they may pay to the king an equivalent out of wealth gained elsewhere, and the king may hire others for the labour required. Thus, if the attendance of a multitude of artificers be inconvenient from the magnitude of the kingdom, he may levy taxes equal to the value of labour for twelve days in the year.

THE king may levy taxes at such rates ; and these rates are directed by the law in times void of distress ; therefore he may not exact a greater revenue : but the prohibition against receiving any tax from a learned *Brâhmana*, even in times of distress (XIV 7), implies, that a greater revenue may be received from others in such times. Let him not make himself wretched in the apprehension of transgressing the law, nor anticipating distress, or providing for his own gratifications, or desirous of amassing wealth, make his subjects wretched (XIV 13). Let him not cut up his own root, that is, his life, by taking no revenue ; nor the root of others by excess of covetousness : such is the construction of the text. The king should pre-  
serve

serve himself for the benefit of others ; for he himself protects others ; and, if he perish, others would not be protected. On this exposition, the receipt of greater revenue is improper ; but in times of distress a greater revenue may be taken. Distress not being perpetual, if a sixth part of the crop have been stipulated at the time of granting the land to the cultivator, no distress then existing, should distress afterwards arise, it is fit, that a greater revenue should be exacted, notwithstanding that stipulation. Such is the induction of common sense.

## XXIII.

MENU : — A MILITARY king, who takes even a fourth part of the crops of his realm at a time of urgent necessity, as of war or invasion, and protects his people to the utmost of his power, commits no sin.

FROM the circumstances of the times, if confidence cannot be placed in the subject, the value of a sixth part, or other proportion of the crop, any how ascertained, may be taken, whether the actual produce be more or less than was estimated : this method is authorized by settled usage, and is indicated by the text.

OTHERS hold, that the king has no property in the soil, nor power to dispose of the subject's abode, because all have a right in the soil ; since the earth was created for the support of living animals, as expressed in the *Sri Bhāgavata* : “ The Earth, which God created for the abode of living creatures ;” and because MENU has only declared, that the subjects shall be protected by the king.

## XXIV.

MENU : — SINCE the lord of created beings, having formed herds and flocks, intrusted them to the care of the *Vaishya*, while he intrusted the whole human species to the *Brāhmaṇa* and the royal *Chhatrīya*.

WERE it so, would it not be uncertain how many subjects shall be protected

ected by what king ? To this they reply, that each king shall protect the inhabitants of that country, whereof the inhabitants can be exempted from the dominion of every other person.

BUT, in fact, without property in the soil, there can be no certain rule for the protection of the subjects. Let it not be said, that the rule above-mentioned suffices ; namely, that the subjects are to be protected in such an extent of country as can be withdrawn from the dominion of another ; for, should the possibility of excluding another authority be received as naturally included in the definition, a powerful king, who from tenderness omitted to seize another realm, would be criminal in not protecting the subjects of that realm ; since he is able to possess himself of it. Nor should it be argued, that the rule directs the protection of subjects in that country, from which other authority is actually excluded ; for, other authority any how subsisting therein, it might be supposed that the king was not bound to protect the inhabitants of his own realm, so long as that authority was not exterminated.

IF it be asked, what is the rule on your opinion ? And if it be argued, that the positive necessity of supposing a proprietary right, and the consequent obligation on the king to protect the inhabitants of that country, of which he is proprietor, should not be affirmed, because such property is not deduced from positive precept ; *we answer*, the exclusion of every other authority is naturally implied ; and it is positively required, that there be " a right of property co-ordinate with the non-existence of a determination not to exclude other authority." It should not be argued, that the obligation of protecting the subject need only be supposed, for it is troublesome to establish another proprietary right. A king's gift of his realm is mentioned in the *Purānas*, and in other works ( " he gave his ancient dominions to the performer of the sacrifice : " ) consequently a real ownership is vested in the king. It should not be said, the gift, in the instance quoted from the *Purānas*, means a gift of the revenue payable by the subjects of his ancient dominions. The gift could not take immediate effect ; for the king's property has no foundation to rest on, since the revenue is not yet paid. Nor should it be said, the property will arise at a future time, from the past existence of the act of

ing, which has only a momentary duration, \* as in the case of a corrody, where a future property is created. A gift of land by the king is mentioned in a text of YA'JNYAWALKYA (Ch. IV, v. XXXIV); and lord of the earth (*mehipati*) and similar regal titles are *often* mentioned.

Is the earth unowned, if the king have no property in it? If it be alleged, that the soil is not unowned, since the subject has property by occupancy; it is asked, cannot the king occupy land? The king may also have property in the land by occupancy. Therefore the right, both of the king and the subject, in the soil, is proved upon the concurrent opinions of CHANDESWARA, SRI CRISHNA TERCALANCA'RA, and many other authors.

PROPERTY must be discriminated by occupancy: thus, if another invade the land occupied by subjects, the king opposes him; and land is occupied by subjects with the king's consent. Kings were created by God to decide the various contests between subjects concerning occupancy and the like, and to maintain just proceedings: therefore the king, as lord of his subjects, is called lord of men (*nerapati*). By his own power, the king prevents others from seizing the land over which he has dominion; by his own power, he legally seizes the land over which others reign: therefore he is not subordinate to the subject.

If a potent subject be able, independent of the king, to resist invaders, and even to seize the lands of others; shall his property be deemed independent of the king? No; for that subject ought to be punished by the king, if he transgresses the law: but, if the sovereign be not able to inflict punishment on him, even he is king.

ANY king, who pays tribute to a foreign prince, is nevertheless a king, if he do not surrender his regal power. But a person, who receives a village from the king, undertaking to pay the revenue of it in the expectation of benefit to himself, is an intermediate owner between the king and the subject.

THIS earth therefore is the cow which grants every wish; she affords

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\* This alludes to philosophical reasoning on the relation between cause and effect.

property of a hundred various kinds (inferiour, if the owner need the assent of another proprietor ; superiour, if his right precede assent ;) while she deludes a hundred owners, like a deceiving harlot, with the illusion of false enjoyment: FOR, IN TRUTH, THERE IS NO OTHER LORD OF THIS EARTH BUT ONE, THE SUPREME GOD.

THE subject's property in the soil is weaker than the king's, for the subject is weaker than the king ; but it is founded on the reason of the law, and on settled usage: therefore the land of one subject ought not to be sold by the king to another. But how can this sale be sale without ownership, since the king is owner of the land, as well as the subject ? It should not be affirmed, that the sale, made by one who holds not such property as is conveyed by the sale, is sale without ownership ; for this is inconsistent with the opinion of those, who contend for a property in the subject dependent on a grant from the king. Thus, according to that opinion, the subject's property is founded on a grant from the king, as superiour lord. But what difference is there, in the effect of a gift or sale ? According to the opinion, wherein it is contended, that the subject's property depends on the gift of the king, so long as the inferiour property is not granted, the land has only one owner : afterwards, a double property arising, an owner may annul his own property, but not the property of another person : else, why could not the subject annul the king's property by selling his own land ? Accordingly, the specifick assent of the owner being the cause of annulling property of the same nature, the king cannot annul an inferiour property : and this very maxim may be maintained on the opinion even of those who contend for a property by occupancy, on the authority of the text which describes the earth as the abode of living creatures. According to this opinion, wherein property by occupancy is maintained, if any subject, occupying land, after some time go to a distant country without surrendering the land, can no other person take the land ; since, without his surrender of it, his property is not annulled ? The meaning of the text, which describes the earth as the abode of living creatures, is positively this ; the property is his, who uses the land, where he resides, and while he uses it : and thus, when land belonging to any person is sold by the king, it is a sale without ownership.

## XXV.

CATYA'YANA:—LET the judge declare void a sale without ownership, and a gift or pledge *unauthorized by the owner.*

IT must be understood from the proximity of the terms, that the gift or pledge is made by one, who is not owner of the thing. Or the suffix is omitted for the sake of the metre. "Declare void," that is, the buyer having received back the price, the owner recovers his chattel.

## XXVI.

NA'REDA:—THE owner, finding a thing which had been sold by a stranger, shall recover it.

"FINDING;" the term is so explained in the *Retnâcara*.

THE owner shall recover his own property sold by a stranger, or one, who is not owner of it: blame is imputable to the buyer; it is imputable to him because he bought not publicly, *but bought the chattel* without acquainting the king or his officers (XXXVII). If it had been stolen by a thief, he must restore the chattel, if the thief be not found; as will be subsequently noticed.

## XXVII.

MENU:—A GIFT or sale, thus made by any other than the true owner, must, by a settled rule, be considered, in judicial proceedings, as not made.

How is it called a sale, for the word "sale" implies the act of annulling former property upon the receipt of a consideration; now the former property cannot be annulled by the act of a stranger? The word "sale" is here employed in a secondary sense, denoting the delivery of a thing, with the previous receipt of a consideration.

BUT some argue, that sale is the act of assenting to the annulling of former property, with the previous receipt of a consideration; and even gift is  
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the assenting to the annulling of former property, but without the receipt of a consideration : and this, they hold to be the sense of the verbs sell and give. Thus, by the authority of the law, in the case of a perfect gift or sale, the property of the former owner is annulled by his assenting to the annulling of it: but, in the present case, the former property is not annulled, though such assent be given, *but given by a stranger*; for a stranger's assent cannot annul property: on the contrary, the giver, or seller, shall be punished. The owner's assent to the annulling of his own property is the cause of *his* property being annulled; and *his* assenting to another's property is the cause of another's property; not generally any assent to the annulling of former property, and any assent to the raising of a property in another: for the cause and effect would be interchangeable. Thus, on that opinion, the gift or sale is truly the cause of annulling a *former* property and investing another with it: because gift is the assenting to vest a property in another, *thereby previously* annulling a *former* property; and sale is the same, but with the previous receipt of a consideration.

THIS opinion is contradicted, because it would be inconsistent with the text; "a gift or sale, thus made, must be considered as not made" (XXVII). When a gift or sale subsists, though the assent was given by a stranger, how is it considered as not made? With reference to this question, authors write, that gift is a relinquishment producing the effect of vesting property in another after annulling one's own property.

In the gift of another's goods, there is not such a relation between cause and effect, as can produce a *real* gift: nor does the law express, that fruit is obtained by the gift of one's own property; for "his own" is not specified in the text, "he, who gives land, obtains land." It therefore follows, that "not made" (XXVII) may be explained, similar to a *gift or sale* not made, in as much as it produces no fruit. Another exposition will be mentioned in the fifth book on inheritance. The conjunctive particle, in the text of CA'TYA'YANA (XXV), is employed to comprehend things not mentioned, namely barter and the rest. Consequently the sense in effect is, 'by the assent of one, who is not owner, another has neither right of property nor of possession.'

WHAT is the rule, if the land of a subject be sold by the king? Why does the king sell it? Does he sell it by an act of violence, or to recover an amercement or the like? In the first case, it is null (X): and, according to the opinion of those who hold, that the king, and not the subject, has property in the soil, there is no sale in the case supposed; for there is no former owner but the king; and the king, selling the land, does not relinquish his own right: therefore, to give possession to another occupant, and to remove the former occupant after satisfying him, some consideration must be given; if he, being satisfied, accept it, in that case there is no dispute; but if he refuse it, possession, given to one, of a thing already possessed by another, is invalid, like the hypothecation of a thing which was already hypothecated to another person.

## XXVIII.

YA'JNYAWALCYA:—IN all *other* contested matters, the latest act shall prevail; but, in the case of a pledge, a gift, or a sale, the prior contract has the greatest force.

IT should not be argued on the superiour force of the earliest contract as thus ordained by YA'JNYAWALCYA, that it may be true of pledges; but the superiour force of the latest act should be affirmed in this case. The party of this case and of the case of a pledge is reasonable: otherwise, why should not the king daily grant the same land to various subjects? Nor can this objection be reconciled to the law. This separate head of judicial procedure being adopted, because the delivery of land by the king to the subject is not included under the head of contests on boundaries, the law of pledges must be extended to it, by parity of reasoning. Or it may be answered, such a bad exposition should not be admitted. Every forcible act is void: but if force be not employed in this case, *the act is valid*; for every man has legal capacity for a gift or sale of his own property. But it would follow, according to the opinion mentioned, that the seeming sale of the subject's land by the king is valid: the subject therefore does not receive its price; it is received by the king *in his own right*: and in that case, an amercement is not recovered from the subject *by a sale of land*; and the king incurs a taint of sin. But, on the other opinion, a sale forcibly made by the king is void.

IN the second case (*where land is sold to make good an amercement or the like*), according to the opinion, wherein the king's sole property is maintained, the amercement is not recovered; as has been already mentioned. According to the other opinion, there is no *express* ordinance for the sale of land belonging to subjects, who are missing, after the period for *the recovery of what is due from them* is passed; but the reason of the law *authorizes the sale*, since an amercement or the like could not otherwise be recovered: therefore the king should afterwards compel the owner to consent. But, if the owner be present, the sale should be made with his consent; or, if he withhold his consent, then other punishment is proper: but, since punishment cannot be inflicted on absent persons, it is fit their property should be sold. When the sale has been completed by the king, and the subject immediately attends, bringing the amount *due from him*; then indeed the sale made by the king is void, for the owner's property is not forfeited. The king cannot forcibly compel him to admit *the sale*, saying; "this property has been delivered by me to such a person; thou must therefore confirm the sale, for I will not accept the amount." But, if the owner do not then attend, this sale *assumes* the form of a punishment for his offence. Else, inflicting other punishment let the king release his property. Thus some *expound the law*. It is declared more fully under the title of contests on boundaties. To enlarge in this place would be superfluous.

It has been said, that the buyer shall receive back the price paid, and the owner shall recover his property: shall the owner repay the price?

#### XXIX.

YA'JNYAWALCYA:—*The buyer* is justified by producing the feller: the owner recovers his property, the king receives a fine, and the buyer receives back the price, from him, by whom the thing was sold.

THE text has been already expounded in the first book on loans and payment (Book I, Ch. II, Sec. III, Art. III).

ACCORDING to the opinion of 'SU'LAFA'NI, the buyer is justified by

producing the feller ; and the owner recovers, or obtains possession of, his own property. According to VA'CHESPATI BHATTA'CHÁ'RYA, he recovers the right of property. A thief having acquired a property by occupancy, the owner's property has been annulled, but is now revived under the authority of the text ; " the owner recovers his property."

FROM whom does the king receive a fine? From the person subsequently mentioned, namely him, by whom the thing was sold; and the buyer receives back the price from the same. The property in the thing is revived, like property annulled by the semblance of a gift.

THIS text being placed under the title of sale without ownership, and the expression, " the owner recovers his property," not being otherwise pertinent, the text must be understood as intending sale without ownership.

### XXX.

VRIHASPATI:—WHEN the feller has been made appear, and has been condemned in the law suit, let the judge cause him to pay the price to the buyer, and a fine to the king; and restore the property to its owner.

WHEN he has been condemned in the law suit, (when it is proved, that he sold the thing, and was not the owner;) he shall be compelled to repay the price &c. not, upon a simple assertion.

HERE, payment of the price to the buyer being required, what price shall be paid? The price actually received; or the present value of the thing?

### XXXI.

NA'REDA:—IN a case of sale without ownership, the feller must restore the thing to the owner; and pay to the purchaser the price for which it was sold, and a fine to the king, as directed by law.

THIS contradicts the childish supposition, that the buyer is entitled to the thing; and the owner, to the price only: for the sale is void. " The price for which it was sold;" the price agreed on at the time of the sale and received by the seller. If any person steal and sell a cow, and afterwards the owner, seeing the cow, claim her; when the price is to be repaid to the buyer, that very price shall be recovered, though the value may have been diminished by the cow being worn by age: shall not the price be therefore recovered, even though the cow have died, if the purchase be proved by evidence; for the buyer has a right to the price, since it was a sale without ownership? It may be so: but this distinction, founded on the reason of the law, is justly inferred; if the cow become useless by age, still the real owner must receive that very cow, and the buyer receive the price he paid; but if the cow become useless, through the buyer's fault, from want of food, or from excess of labour, the buyer must receive less than the price, and the difference must be paid to the owner of the cow: it is not the seller's gain. If the cow have died by mere accident, the recovery of the price is the buyer's gain, and the owner shall not obtain a cow from the buyer; for his cow is lost to him, and the law does not show that any equivalent shall be given. This is pertinent on the opinion of 'SU' LAPA'NI.

BUT sale without ownership is established with difficulty on the opinion of those, who assert, that a thief has property in the thing stolen; for, *according to that opinion*, a thief has ownership. It is thus *reconciled*: the thief's ownership ceasing when the cow is recognized by the real owner, it then becomes sale without ownership. If it be so, is not every sale a sale without ownership? For all sellers, by the act of selling, become non-owners; since perpetual ownership, *even after alienation*, is no where admitted. Nor should it be argued, that "owner" may be here understood in the triple sense of actual owner, of him who annuls that ownership by sale or the like, and of him who was not previously the owner: for property is annulled by a sale made even by a thief. To the question thus proposed, the answer is, No; for there is no difficulty in supposing an owner different from a thief to be positively intended by the word "owner," in the expression sale without ownership, *or sale by one who is not the owner*. Of what use is this supposition? For the difficulty may be removed by not admitting the thief's ownership:

and the objection is answered by asking; how can property arise without acquisition by an owner? The following text shows that property does vest in a thief.

## XXXII.

NA'REDA and the *Viṣṇu-dharmōttera*:—WHAT is acquired by servile attendance, gaming, theft or the like, or by disguise, robbery, or fraud, all that is called property.

FORMER owner or *possessor*, in a text which will be quoted from VRĪHASPATI (XXXII), must have some meaning: but, if thieves have not ownership, the word "former" would be unmeaning, since there would be nothing to which it could be opposed. Accordingly, if a person, having bought at a high price effects stolen, is dissatisfied *with his purchase*; and, after the period limited by law *for the rescission of purchase*, discovering, that this sale, having been made by a stranger, is void, wishes to return the thing; it is not to be returned, even though the owner of the thing, who had not disposed of it, be dead. Such is the rule laid down by VĀCHESPATI BHATTACHĀRYA. According to his opinion, if a cow, which had been stolen and sold, die, it is lost to the buyer; for it is the loss of a thing possessed by him as property: therefore, in that case, he shall receive the price *from the seller*, on delivering an equivalent *to the former owner*; and, in the case of a thing stolen, the former owner receives an equivalent, under the authority of the law, if the original thing be lost.

BUT, according to the opinion of SŪLAPAṆTI, property, in the text of NA'REDA (XXXII), intends the power of disposing of the thing at pleasure; and the word "former" is employed in the text of VRĪHASPATI, in opposition to the thief and the buyer, who are secondary owners, in as much as they perform acts of ownership. It is a bad rule, in the case of effects stolen and sold, that a buyer, discovering the theft and desiring to return the effects, may not return them. Thus a buyer discovering the theft, and desiring to restore the effects, but forbidden by the king or the arbitrators, keeps the effects and returns to his house; after some days, the owner comes and claims the effects, and the thief, who had clandestinely sold them, is dead; in this case

case the effects are the former owner's, and the buyer, though not in fault, would be a loser by restoring the effects without receiving the full price. He does not incur blame, wherefore he should lose half the price, as in the case even of a thing publickly bought; for, on discovering the theft, he was willing to return the effects.

SOME hold, that there is no difficulty, if the producing of the seller (XXIX) be explained discovering the theft of the seller, that is, making it known to the king's officers, or to arbitrators or the like. Therefore, in this case, the buyer, informing the king that the seller is a thief, may recover the price. No difference results from the two opinions: but, the text of NA'EDA being the sole ground for admitting *such* property, the practice, exhibited in explaining the opinion maintained by VA'CHESPATI BHATTA'CHA'RYA is bad. Is there not a difference in the result of these opinions; since, according to 'SU'LAPA'NI, it is not the buyer's loss, if the cow, which had been stolen and sold, die; for it is not the accidental loss of what was possessed by him as property: but, according to VA'CHESPATI BHATTA'CHA'RYA, it is the buyer's loss; for it is the loss of what was possessed by him as property? No; for, the sale being null, because it was a sale without ownership, it is fit, even on the opinion of VA'CHESPATI BHATTA'CHA'RYA, that the loss should fall on the thief. Consequently, the cow being dead, there is no present opportunity of investigating the property; but, the price not being lost by *the same* accident, the buyer has a right to it. According to the opinion of VA'CHESPATI BHATTA'CHA'RYA, if the price of the thing sold be fortuitously lost, and it afterwards appear to have been a sale without ownership, is it not improper to investigate the property and require compensation, since the money is lost? Even according to the opinion of 'SU'LAPA'NI, is not the thief unaccountable, since it was lost, while it yet belonged to the buyer? and, in a similar case, if the cow be living, shall she not be received back by the thief, since the sale is void, being made without ownership? If a thing, bailed to an artist, and not restored by him, be lost by accident, it is the owner's loss; for there is no fault in the artist: but if it be lost after the stipulated period *for repairing it &c.* it is the artist's loss; for his exceeding the stipulated time is a fault (Chapter I, v. LIII). So the thief, committing a crime by selling

selling the goods of another, must repay the price even though the goods be lost: but, if they were bought with previous knowledge of the theft, the price of those goods, should they be lost by accident, is not to be repaid; for both are criminal. Even in the case of the death of a cow, which had been stolen and sold, the owner shall recover an equivalent from the thief; for he is criminal, as an artist, who exceeds the stipulated time, is faulty. If it be said, the thief is criminal in regard to the owner, because he may be thus accused; "wherefore has my cow been delivered to another?" But how is he criminal in regard to the buyer, to whom he delivered the cow; for he made a contract, receiving the price on the delivery of the thing? Even the buyer can arraign him. For example: "he is dishonest in having taken my money, giving me another's property, which cannot long remain, and which is *therefore* unfit for my intended uses: why did he not keep it at home?"

THIS opinion should be received as the settled rule: the several opinions, previously noticed, were mentioned for the sake of illustration. To enlarge would be superfluous.



## SECTION II.

## ON THE PRODUCTION OF THE SELLER AND JUSTIFICATION OF THE BUYER.

## XXXIII.

VRĪHASPATI:—WHEN the former possessor shall come and prove his property in the thing bought, let the purchaser produce the feller; for thus may he clear himself.

THE *Retnācara* explains “the former possessor,” the person who was owner of the thing before the theft, or who had power to dispose of it at pleasure: “the principal” here signifies the feller. The legislator means the principal in the sale.

## XXXIV.

YA'JNYAWALCYA:—HE, who has purchased the goods of another which had been lost or stolen, must, when accused by the owner, cause the thief, or other person who sold them, to be apprehended: but, if circumstances of time or place prevent his apprehension, the buyer must himself restore the goods.

HE, who has acquired, or obtained by purchase or the like, the goods of another lost and seized or stolen, being accused by the original owner (this should be supplied in the text), must cause the man, who stole them, in other words, the man who sold them, to be apprehended by the king's officers. He must cause him to be seized. But if he cannot cause him to be apprehended, being prevented by circumstances of “time or place,” that is by the death or absconding of the feller, or the like; in that case, the buyer must himself restore the goods, when the owner's property in them is proved. Such is the exposition approved by CHANDÉSWARA. “Cause to be apprehended”

explained by some, *show or point out*; for the verb *grab*, take, is used in the sense of know.

THE goods must be thus restored, without *receiving back* the price, if the purchase was privately made; but not so, if the purchase was openly made.

## XXXV.

CA'TYA'YANA:—EITHER let a man make an open purchase in an assembly of people, or let him produce the feller; but let time be given him for the production of the feller according to the number of *yôjanas*.

2. HAVING offered to produce the feller, if he afterwards tender proof of a fair sale, let the judge require the production of the feller; there is no use of such proof of a fair sale by the defendant, *who first offered another justification*.

By proving an open purchase, or by producing the feller, let the buyer vindicate his innocence.

CHANDÉ'SWARA.

CONSEQUENTLY the alternative of an open purchase and production of the feller denotes mutual opposition. It follows, that the same exemption from making good the effects himself, which the buyer obtains by producing the feller, is also *allowed* in the case of an open purchase. Let him prove his innocence, and therefore be exempt from penalties.

"AN open purchase;" a purchase known to arbitrators and to the king's officers. "Let time be given him for the production of the feller:" if the feller resided in a distant country, he cannot be produced at the instant; let time be allowed for that purpose, and let the recovery of the thing be so long deferred "According to the number of *yôjanas*:" let so much time be given, as is requisite to travel, going and returning, so many *yôjanas*, as is the distance to the feller's residence.

"HAVING offered to produce the feller, &c." (XXXV 2): the buyer, when first accused, having said, "I will produce the man, from whom I received the thing," afterwards says, "many persons know of my purchasing it;" in that case, his first and second plea differing, on which plea shall the decision rest? To that question the answer is this; "there is no use in his proving an open purchase;" that is, upon such proof, he will not be held innocent: *let the judge* require the production of the feller. This interpretation agrees with the *Retnâcara*.

It must be considered, that the text provides against dishonesty. Therefore, if the buyer, first undertaking to produce the feller, go to fetch him; but the feller happening to be dead, the buyer returns, and says, "the feller is dead, but all the witnesses named know, that the thing was bought from him;" in that case, if all the circumstances be proved, the decision must depend on the fairness of the sale: but, otherwise, it depends on the production of the feller.

ACCORDING to VA'CHESPATI MISRA, the text merely exhibits the natural inference. Thus, when the buyer says, "I bought this thing of DE'VADATTA, and all know the purchase and the commodity bought:" the feller must be apprehended, for thus may the sale be proved. But, if the feller be not forthcoming, the justification of the purchase must depend on its publicity: and, according to this opinion, the necessity of proving a fair purchase surely follows in case of the feller's death, as abovementioned.

If the buyer first plead, that the sale is publicly known, and afterwards offer to produce the feller, how is the law settled in this case? Since the text requires the production of the feller, when the sale is pleaded after offering to produce the feller, and since the circumstances of the case are here reversed, therefore proof of a fair sale should be required.

If it be argued, that the reason of the law shows the production of the feller to be requisite in all cases, for MISRA *says*, it is by producing the feller, that a fair sale may be proved; but, according to the *Retnâcara*, the first plea should be tried: some reply, that the result of the different expositions

tions of both authors is the same : and it should be so admitted ; thus, if the sale be first pleaded, and the production of the seller be afterwards offered, both proofs should be received ; for there is no ordinance for rejecting either proof ; nor is it consistent with the reason of the law.

WHAT shall be the decision, if the defendant, failing in one proof, succeed in the other ? The defendant, any how clearing himself from suspicion of theft, gains his cause, and thus may be effected by either proof. By failure in which of them could his success be prevented, since both are severally declared by the law to be *admissible* proofs in justification of purchase ? .

WHAT is the mode of proceeding, when a real thief, employing various methods to conceal the theft, advances several pleas at several times ? In reply it is asked, how is the theft ascertained, unless he fail in the proofs required by the law ? If it be said, this is inconsistent with the exposition of the text of CA'TYA'YANA according to the *Retnâcara*, for proof of a fair purchase is in such case pronounced inadmissible, it is answered, the exposition of the text should be considered as supposing knavery : therefore, when knavery is observed, the cause must be tried on the first plea : but if no knavery appear, it may be tried upon any of the pleas : such is the true sense of the text according to the *Retnâcara* ; and the production of the seller and the proof of a fair sale are not exclusively intended by the text.

HERE it should be noticed, that, when the cause is tried, if the defendant be able to write, the judge should require all his pleas in writing and a writtendeclaration, that he has no other plea : afterwards, should he offer another plea, he is evidently disposed to knavery. This we hold to be proper.

### XXXVI.

MENU :—HE, who has received a chattel, by purchase in open market, before a number of men, justly acquires the absolute property, by having paid the price of it.

THE place, where things are sold (*vicriyanti*), is the market (*vicraya*) : he, who there buys a saleable commodity in the presence of persons trans-

acting any business, thereby justly acquires the absolute property, justified by purchase from one who sells without ownership, because the seller receives the price from him. So CULLŪCABHATTA, who reads, in the third measure of the verse, *visuddham bi* instead of *visuddhabh syāt*. He makes it evident that the word *vicraya*, formed on a suffix denoting locality, signifies a market. He considers this text as bearing the same import with the text of MARI'CHI (LV). "Received by purchase:" purchase *here* intends receipt of a thing for a price paid under the name of purchase:

It appears from this interpretation, that the buyer is not faultless, if the purchase was made in any other place than an open market, and before credible persons, who are not officers employed by the king. But simple men thus interpret the text; "He, who has received a chattel, by sale, as the cause of receipt, before a number of respectable persons, is justified by the known open purchase, and legally acquires the property." The suffix of the word *visuddha* is in the neuter sense. But, reading *visuddhavam* instead of *visuddham bi*, the sense is obvious. In the text (LV), a place of trade is mentioned approximately; for sales and purchases can hardly be transacted any where but in a place of trade: and thence it is deduced, that a purchase secretly made, in a man's own house or the like, is defective. The word *cula*, signifying a number of persons of the same rank, in this text conveys a limitation: consequently men equal in rank, being respected persons, are meant. The term is explained by AMERA genus, or multitude of similar beings. It is used by accurate speakers in the sense of near neighbours. According to this opinion, a purchase, any where made before respectable persons, is an open purchase; and there is no fault in the buyer. Consequently the meaning is this; neither the defect of a private purchase grounded on the want of evidence, nor the suspicion of having purchased the chattel knowing it to have been stolen, exists in the case of a purchase made before respectable persons: and, if a purchase, made after registering the name of the seller and of his ancestors to the third generation and his place of abode, be faultless, and not otherwise, then it is proper, that the purchase should be made in the presence of the king's officers; and, the king's officers being stationed for the government of the country at large, it is proper, for the purpose of avoiding much trouble, that the purchase be

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made

made in a place, where many purchases and sales are transacted, namely in a market. But no ordinance appears to prove this clearly. The difference between the two opinions should be fully examined by the wife.

CHANDÉSWARA reads, "he is justified by the purchase" (*sa vijudd'has tu*), and explains the text (XXXVI); "He, who receives a chattel, in open market, before an assembly of respectable persons conducting judicial procedure, is legally justified by the purchase, and obtains the property *from the seller*." Consequently, according to his opinion, the rule does not direct the purchase to be made before the king's officers, for arbitrators, as well as officers employed by the king, conduct judicial procedure, since this term denotes the trial of causes; and the epithet of respectable would be superfluous, if king's officers were intended by CHANDÉSWARA in the expression, "conducting judicial procedure;" for persons not respected are not appointed by the king to be his officers: their appointment would be useless, since such persons are not capable of conducting affairs. Neither is the superiority of king's officers, appointed for other business, above principal *Bráhmanas* and the like, consistent with the reason of the law; and the same sense is intended when persons conducting judicial procedure are mentioned, as when king's officers are specified.

Why not rely on the derivation of the word in the sense of locality. This objection is not proper; for derivatives in this form, from words of this class, are regularly used in another sense. But, if that derivative sense be admitted in the apprehension of the word being otherwise superfluous, sale is inferred from what follows. Consequently, market is mentioned as an instance only; if a purchase be made before principal persons, there is no distinction, whether it be in a market or in any other open place; and, according to this opinion, the text must be supplied, "he is legally justified by *the fairness of the purchase*." But practice, in some places, justifies any sale made in the midst of the town, and in the presence of respectable persons.

It must be considered, that the king's officers are few, and respectable persons are surely numerous in every town. Consequently, if it  
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be directed, that every sale be made in the presence of those few persons, they become in a manner acquainted with the sellers by frequently seeing them : but, if made in presence of many different persons, these, being only now and then present at sales, do not become acquainted with the persons of sellers : therefore it is proper, that purchases be made before the king's officers. If the king, considering this, forbid sales to be otherwise made ; then, considering the king's command as cogent, this form should be observed, without questioning whether it be, or be not, ordained by the law ; and, if the business of buying and selling be not obstructed by this formality, then also it should be observed. To expatiate would be superfluous.

## XXXVII.

YA'JNYAWALCYA:—THE owner shall recover his property sold by a stranger: blame is imputable to the man, who buys not publicly ; and he incurs the guilt of a thief, if he buy from a very low man, in a secret place, at a very cheap rate, and at an improper time.

IF the purchase be clandestine, blame is imputable to the buyer : such is the construction. “ If he buy from a very low man” &c. is a distinct phrase. CHANDÉSWARA thus comments on the text ; “ from a very low man” not likely to be the owner of that chattel ; “ at an improper time,” not at the proper hours of sale. Consequently he, who buys from a very low man, clandestinely, at a very cheap rate, disregarding *proper* time, is a thief : such is the sense of the phrase.

Is a purchase, made under any one of those circumstances, punishable as a theft ; or a purchase, made under all those circumstances ? Not the first ; for “ in a secret place” would be superfluous, since the same results also from the preceding phrase ; and even a purchase made before the king, at an improper hour, would be criminal. Not the latter ; for a purchase made at a proper time, even though at a very cheap rate, from a very low man, and in a secret place, would be faultless. To the question thus proposed the answer is, this half of the text shows defects incident to purchase though proved ; therefore each of the circumstances mentioned are causes of defect. “ In a  
secret

secret place, at an improper time," are distinguished ; therefore a purchase, made in the middle of the night, even in the presence of the king's officers, is defective: for even those officers are not respectable, consenting to the sale of effects which they know to have been stolen. A secret purchase is therefore separately mentioned to denote such a distinction.

It must be considered, that there is no offence, if it be fully ascertained by five respectable persons, that the thing was given to this low man by some considerable person ; and, if urgent necessity be fully proved, there is no offence in a voluntary sale, even at a very low price; nor is there any offence on the part of the buyer, even though the purchase be made in the middle of the night, if the thing was thus sold from apprehension of the seller's kinsmen, but in the presence of honest and respectable persons: and, even in the case of a purchase privately made, if the seller acknowledge the sale and the buyer's innocent intention, there is no offence. The king, from his own judgment, should apply to each case, what agrees with the reason of the law ; for, " if no decision were made according to the reason of the law, there might be a failure of justice."

### XXXVIII.

NA'EDA:—HE, who buys any thing from a slave, without authority from his master, from a man not of a good character, in private, at a very low price, and at an unfit hour, becomes an accomplice of the man, who stole it.

If a slave, intrusted with a chattel for transport or custody, having it in his power, sell it, he is a thief; and so is the buyer also: but if the owner authorize the sale, there is no offence. It must be considered, that, on whatever occasions (for the support of the family or the like) a debt, contracted by a slave, would be payable by his master, the sale of his master's property, for the same purposes, is valid. The expression, " without authority from his master," intends a case not attended with such circumstances: and the same sense should be ascribed to the text of MENU: "*A contract made by a person without authority is utterly null*" (XI).



“ SLAVE ” is here employed in the general sense of any dependent person; therefore a purchase, made from a son or the like, is defective: but, if a man buy, with the knowledge of the owner’s having authorized the sale, there is no offence.

## XXXIX.

CA’TYA’YANA:—THE defendant, not clearly proving an open sale to him, or not pointing out the seller, shall be made to deliver the thing claimed and to pay a fine.

JUSTIFICATION of the purchase consists in the proof of an open sale. He shall be made to pay a fine, as a thief. In this case, the buyer is not justified; MENU propounds the fine, which the king receives, as declared in the text of YA’JNYAWALCYA (XXIX).

## XL.

MENU:—IF, indeed, he be a near kinsman of the owner, he shall be fined six hundred *panas*; but, if he be neither his kinsman nor a claimant under him, he commits an offence equal to larceny.

“ SHALL be fined ” (*avahárya*); shall be amerced. “ A near kinsman of the owner himself ” (*śvānwaya*); a son or other near relation of the owner. “ Six hundred; ” *panas* must be understood. “ Not his kinsman; ” not related to the owner. “ Not a claimant under him ” (*anapafara*); not having taken it *by authority of a kinsman*: the taking of it is the removal (*apafara*) of it from the house of the owner. Hence he, who sells the property of another, being related to him, shall be fined six hundred *panas*: but, if that seller be neither related to the owner, nor become, through a kinsman of the owner, receiver of that chattel taken from the house of the owner, but himself be the taker of it, he shall be punished as a thief: if the embezzlement of the chattel be the act of another, and the seller be unallied to the owner, he shall be fined even in a larger sum than six hundred *panas*.

“ A FINE ;” an amercement of six hundred *panas*. He shall be fined ; a fine shall be levied (*avabārya*) on him. The etymology of the term *swān-  
waya* is, ‘ he, in whom there is a relation (*anwaya*) with the owner himself (*swa*) ;’ that is, a son and so forth, including brothers and the rest ; for it is so declared by CULLU’CABHATTA. A seller, into whose hands the chattel had not been removed or transferred from the house of the owner by another who is kinsman of the owner ; such a seller, *we say*, not being related to the owner, commits an offence equal to larceny. If the sale of a chattel transferred into his hands by a son or other kinsman of the owner be made by one not related to the owner, he shall be punished in another mode : on this a question arises, to satisfy which the commentator adds, ‘ if the embezzlement be the act of another, and the seller be unallied to the owner (for the sign of the privative “ a” must be understood), he shall be fined even in a larger sum than six hundred *panas*.’ By the particle ‘ even ’ it is intimated, that a larger fine than six hundred *panas* is founded on the reason of the law. According to this opinion, the rule concerning a sale without ownership by one unallied to the owner is two fold.

BUT the author of the *Calpateru* says, that, by which a thing departs (*apasaratī*) or is transferred, is a claim or title (*apasara*), as acceptance and so forth : he, who has not such a claim or title, is not a claimant under the owner. If the property of another be sold, without acceptance of donation or other claim under him, by one not related to him, the seller shall be punished as a thief.

AND this interpretation is approved by BIRĀ’GURI, the *Mādhātī’bi* and the rest. MISRA also fully approves it ; and according to this opinion the rule concerning sale without ownership, by one unallied to the owner, is single, and there is no distinction of embezzlement or no embezzlement by a kinsman : however, the term “ claimant under him ” becomes superfluous according to this interpretation ; for, if a man sell property, obtained by acceptance of donation or the like it is not sale without ownership, since the effects had become his property by the acceptance of donation. Considering this objection, the author of the *Retnicara* has approved another interpretation. CULLU’CABHATTA expounds the word *apasara*, acceptance, purchase

purchase or the like: he, to whom no such title has been given by the son or other near kinsman of the owner, is not a claimant under him (*anapafara*). Consequently he has nearly followed the opinion of the *Retnācara*. When the son or near kinsman of the owner is giver or seller, there is a ground of claim: even on the opinion of the author of the *Calpateru* and the rest, this interpretation may be adopted; for, in answer to the question from whom accepted, the owner must not be assumed, but his son or near kinsman: else the term (*anapafara*) would be unmeaning; and if a term can become pertinent, it should not be considered as a superfluous term expressive of what is naturally inferred. Consequently the opinions of all authors coincide.

THE son, or other kinsman, who had given or sold the thing to the person who sells it again without ownership, shall be amerced; for he causes the sale without ownership to be made. Or this is intimated by the author of the *Retnācara*, 'if the embezzlement be the act of another, &c;' for, if a thing, obtained by purchase from a kinsman who embezzled it, be sold, the kinsman, who first sold it to the *last* vender, shall be fined six hundred *panas*; and it appears from the particle "even" or "also," that the seller, who had purchased it from a kinsman, shall be amerced.

IT must be considered, that, if a son or other kinsman, secreting any property, sell it through an intermediate person, the seller shall not be punished as a thief, but shall be amerced in six hundred *panas*, or the like; and the intermediate person, being in fact a substitute only, shall not incur the punishment of a sale without ownership, but receive severe reproof or other reprehension suitable to such improper conduct; but the man, who sold the thing through an intermediate person, incurs the amercement mentioned.

## XLI.

MENU:—By this rule shall that man be punished, who ignorantly makes a sale without ownership; but if he knowingly do so, he is liable to the punishment of larceny.

ATTRIBUTED by CHANDE'SWARA to MENU, but inserted by MISRA after the texts of MENU, premising the word "so." Is it not inconsistent with the following text, which, declaring innocent the sale of another's property inadvertently made, shows, that there shall be no punishment?

## XLII.

*Matfya Purána*:—THAT man, who ignorantly sells the goods of another, is free from offence; but, if he knowingly do so, he is liable to the punishment of larceny.

CHANDE'SWARA explains free from offence, exempt from capital punishment, not exempt from amercement.

WHAT is the meaning of the terms, "by this rule" (XL)? MISRA replies: he, who ignorantly sells the property of another, shall be punished with an amercement of six hundred *panas*; but he, who knowingly sells another's property, shall be punished as a thief, by mutilation and the like.

SHALL the man, who inadvertently sells the property of another, be fined six hundred *panas*, whether he be a kinsman of the owner or not? Some hold, that a kinsman of the owner, who ignorantly sells property not his own, shall be fined six hundred *panas*; but, knowingly selling it, he shall be punished as a thief; and if, not being a kinsman, a man ignorantly sell the property of another, he shall be punished as a thief; but, if he wittingly sell it, the law knowing no greater punishment, he shall, in that case also, be punished as a thief: and the meaning of the text is, "by this rule," "by a pecuniary fine of six hundred *panas*, and by the punishment of larceny, shall the kinsman, and stranger, respectively, be punished, if they ignorantly sell the goods of another; but whoever knowingly sells the goods of another, whether a kinsman or no kinsman, shall be punished as a thief:" and the text of the *Matfya Purána* relates to kinsmen; for a stranger is, in all cases, punished as a thief.

OTHERS say the pronoun "this," in the expression "by this rule," referring to the subject of thought, intends a fine of six hundred *panas*; and the meaning

ing is, that a stranger, inadvertently selling the goods of another, shall be fined six hundred *panas*; and the expression, "he commits an offence equal to larceny," supposes the wilful sale of another's property: but a kinsman, whether ignorantly or knowingly selling the goods of another, shall be fined six hundred *panas*, for the law has not shown a less punishment. It cannot be objected, that there is no argument whereon to establish such a bad construction; for, on any other construction, the punishment would be disproportionate. Thus the very punishment, which is due, when a man seizes a thing in the night and so forth, knowing it to be the property of another, would be incurred by one, who, keeping a deposit to oblige the owner, (and the chattel being placed with his own goods and being similar in quantity,) sells that chattel which belongs to another. This would be highly inconsistent with common sense; and the text of the *Matfya Purána* expressly declares, that there is no offence. If it be said, that text should be otherwise explained; they answer, can a capital punishment be proper in a case, in which it is declared, in general terms, that there is no offence?

OTHERS again say, the *Matfya Purána* declares innocent the holder of a deposit, or the like, intrusted to him by the owner himself; but the punishment of a man, who, finding another's chattel dropped on the road, sells it, thinking it his own, is mentioned by MENU: and this should be expounded in conformity with the opinion of others, because the seizure of a chattel dropped on the road is as it were a theft.

THE best of these opinions should be selected by the wise; but one opinion only should be adopted. In such detail has punishment been mentioned for the case of a sale without ownership; and that punishment is only inflicted when the owner has proved his property.

#### XLIII.

CA'TYA'YANA:—THE owner of a thing, which he loses, and then finds, shall recover it, if he prove by credible witnesses that it was his own, and that he never gave, sold, or otherwise aliened it.

“ By credible witnesses ;” by competent evidence. The word “ abandoned” denotes sale, gift, or any other act annulling property.

The *Retnācara*.

CONSEQUENTLY “ abandoned” (the term used in the text) does not merely intend “ neglected,” for in this place it may indicate any act annulling one’s own property, and comprehend gift, sale or the like ; gift and sale are repeated in like manner as one name of kind may denote cattle of that sort, and a synonymous term in the same sentence may intend cows only : therefore “ abandoned” (or aliened) denotes also gain, conquest and acceptance.

THE person, who had lost the thing, shall recover it on showing, that it is in fact his own, by proving, that he neither gave, sold, nor otherwise aliened it. Or he shall recover it on proving, that it was his own, and that he never gave, sold, or otherwise aliened it. Consequently the order of procedure is this : first, on seeing his chattel in the possession of any person, he has claimed it, and the buyer has produced the seller ; next, in a contest with the seller, let the owner prove his property, by showing, that the thing was his own, and that he never aliened it. Let not the buyer contest the property, for *VYA’S* directs, that “ the law suit shall be continued between the owner of the thing lost, and the seller” (XLIX). But, if the seller be not forthcoming, the suit must be defended by the purchaser, as will be mentioned in another place.

#### XLIV.

CA’TYA’YANA:—BUT, if such claimant prove not the thing to be his own by credible witnesses, he should be punished as a thief, for the sake of deterring *others* from making false claims.

“ CREDIBLE witnesses,” mentioned approximately. Proof in general is meant. The *Retnācara* notices another reading, “ if he prove it not by kinsmen,” which is explained as mentioned incidentally, intending proof in general ; some, it says, read ‘ if he prove it not by credible witnesses,’ and

the same meaning should be inferred. That is, credible witnesses indicate proof in general : the word (which literally signifies making known) does not merely intend witnesses making known *the fact* ; but, taken in a secondary sense, with and without its primary sense, intends possession and other proof : for the purport is the same, as in the text, which will be quoted from YA'JNYAWALCYA (XLV).

“ FOR the sake of deterring &c ;” to prevent repeated claims. Thus, being punished to prevent a repetition of the offence, he may not repeatedly prefer false claims : and, the claim itself being criminal, as often as he makes a claim, the truth of which he cannot establish, so often shall he be punished : since punishment for each claim is proper, as it is for repeated theft. Thus some expound the text.

#### XLV.

YA'JNYAWALCYA:—THE right to a thing lost *and then found* must be proved by the mode of acquisition, or by *evidence of possession* ; otherwise, on failure of proof, a fine equal to a fifth part of its value, shall be paid to the king.

LET the owner of a thing, which has been lost and is found, prove his property by the mode of acquisition (by purchase or the like), or by *evidence of actual enjoyment* : otherwise, on failure of this and other proof, (that is, the property not being proved,) a fine equal to a fifth part must be paid to the king : this construction agrees with the gloss of the *Retnācara*. The written contract of sale is evidence of a purchase ; and so in other cases : but actual enjoyment, even without proving a purchase or the like, is presumptive evidence of property.

#### XLVI.

VRĪHASPATI:—THE covetous man, who, without any right, claims the property of another, on failing in his proof, shall be compelled to pay a fine equal to double the value of the thing claimed.

THIS payment of a fine equal to double the value supposes a claim covetously made, knowing the thing to be the property of another; but a fine equal to a fifth part of the value, as mentioned by ΥΑ΄JNYAWAΛEYA, supposes a claim made by mistake: there is no contradiction.

The *Retnâcara*.

WHAT is the import of the words of CA΄TYA΄YANA, "he should be punished as a thief" (XLIV)? Some hold, that this repeats the punishment of theft. Thus, when a fine equal to double the value is mentioned, reference must be had to the text of VYA΄SA.

VYA΄SA:—THE man, who steals hollow canes, flowers, roots or fruit, shall be compelled to pay a fine equal to double their value, or an amercement of five *crishnalas*.

"HOLLOW substances;" canes and the like. The word *crishnala* intends a quantity weighing a barleycorn. So the *Retnâcara*, in the chapter on theft. The terms of the text of ΥΑ΄JNYAWAΛEYA intend five times the value; consequently, when a fine equal to five times the value is mentioned, reference must be had to the text of NA΄REDA.

NA΄REDA:—FOR *stealing vessels* made of wood, grass, or earth, bamboos and vessels made of bamboos, tendons, bones, or leather,

2. Potherbs, esculent roots, fruits or flowers, milk or the like, or the produce of the sugarcane, salt, or oil,
3. Victuals cooked, or *any thing* prepared for food, wine, boiled rice, or any cheap article, the fine is five times the value of the thing stolen.

AND so, for other things, the amercement must be understood to be the same with the fine in cases of theft. But this is not satisfactory, for it disagrees with the *Retnâcara*.



OTHERS explain the text (XLV) differently. Let the owner of a thing lost prove his property by the mode of acquisition or by evidence of prior occupancy. Therefore, if it be proved in another mode (that is by witnesses), or if it be not proved, a fine equal to a fifth part of the value shall be paid. Another case, *they say*, is mentioned by VYĀ'SA.

## XLVII.

VYĀ'SA :—If the plaintiff prove not his loss by witnesses, he shall *in that case* be compelled to pay double its value ; and the purchaser is entitled to the thing.

THEY expound this text “ Let him not prove his loss by witnesses &c.” Let him prove his property in the thing which has passed from the right owner to another person ; he should not prove his right by witnesses, but by other proof as mentioned by YĀ'JNYAWALKYA. If he cannot prove his right in the mode ordained by YĀ'JNYAWALKYA, what is the consequence ? The text declares, “ he shall be compelled to pay” &c : and the purchaser is entitled to the thing : that is, the claimant loses the cause. But, if he cannot bring witnesses, CA'TYĀ'YANA directs, that he shall be punished as a thief (XLIV). It should not be objected, that, if the right owner be unable to prove his property by the mode of acquisition, why should he bring witnesses ? Witnesses should be brought for the purpose of obtaining a mitigation of the fine : the king should take evidence to decide according to the honest disposition of the party. Thus the exposition given in the *Retnācara*, to reconcile the texts, is apposite : the text of YĀ'JNYAWALKYA (XLV) is applicable to the case of a claim made by mistake ; and the texts of VYĀ'SA and VRĪHASPATI, to a claim made from a motive of avarice.

THAT is totally wrong. If witnesses be not adequate proof, how should the fine be mitigated, under those texts ? If they be adequate proof, why should not the party be exempted from a fine, under those texts ? And it contradicts the text of CA'TYĀ'YANA (XLIV), which shows, that the owner shall recover a thing lost and then found, if he prove by credible witnesses that it was his own, and that he never gave, sold, or otherwise ali-

ened it. The true interpretation of the law is this; he, who cannot prove his right, incurs punishment, because his offence is similar to larceny (XL and XLIV). Consequently he shall be punished as a thief (even though he have not actually taken the goods of another) if he make the attempt: for punishment is mentioned generally by CA'TYA'YANA. A distinction is declared by YA'JNYAWALKYA and VRĪHASPATI (XLV and XLVI), according to the different motives of the claim, mistake or avarice. The text of VYĀSA (XLVII) must be supplied with the words *if and in that case*: "if the plaintiff cannot prove his right by credible witnesses, he shall in that case be compelled to pay a fine equal to double the value of the thing claimed:" and this text, which relates to the case of a law-suit between the owner of a thing lost and the buyer, may, from parity of reasoning, be applied to a law-suit between the owner of the thing lost and the thief; therefore, in such a case, the supposed thief obtains the thing.

WHEN the buyer cannot produce the seller, nor prove a fair purchase, he shall pay an amercement, as directed by the following text.

#### XLVIII.

CA'TYA'YANA:—THE claimant should first prove his property by oral evidence; next, to clear himself, the buyer should prove a fair purchase by credible witnesses:

2. If he cannot produce the seller, let him even justify the purchase; and if the purchase be justified, he shall in no wise be blamed by the king.
3. LET him prove a public purchase by honest and credible witnesses: there is no other mode propounded, divine or human.\*

THE order of proceeding should be nearly such. A man, finding a thing in the possession of some person, claims it as his own; and the possessor alleges, that he purchased it: in that case, if he can point out the seller, and

the seller acknowledge the sale, the suit must be maintained against the seller as abovementioned. But, if he cannot point out the seller, then the claimant must prove his property by sufficient oral evidence; and the buyer must afterwards justify the purchase by credible witnesses; that is, he must prove the actual purchase. The buyer has a right to prove a fair purchase, if he cannot point out the seller; but, if he point out the seller, he cannot afterwards offer proof of a fair purchase (XXXV 2). As this justification is of less force, the text proceeds, "if he cannot produce the seller, let him even justify the purchase" (XLVIII 2): the word "even" shows a distinct order of proceeding; if he cannot produce the seller, (if he cannot cause him to be apprehended), let him justify the purchase; or let him prove his purchase by credible witnesses. But if the seller, attending, do not acknowledge the sale, let the buyer compel an acknowledgment by the evidence of his own witnesses, who knew of his purchase: and this only is a true production of the seller; it is not sufficient, that he merely point out the person of the seller.

Is not this inconsistent with the text of VYA'SA ?

#### XLIX.

VYA'SA:—BUT if the seller be produced, the purchaser shall by no means be condemned; for then the law-suit must be continued between the owner of the thing lost and the seller.

It is not inconsistent; for this is proper, since the word law-suit here denotes the suit promoted by the original owner of the thing to obtain his property. When a man claims a thing, which has been purchased by any person, why should the buyer unnecessarily take the trouble of producing the seller? But when the owner proves his property by witnesses or otherwise, that trouble must be taken.

#### L.

MENU:—BUT, if the vender be not producible, and the vendee prove the publick sale, the latter must be dismissed by the

the king without punishment; and the former owner, who lost the chattel, may take it back on *paying the vendee half its value*.

If the vender being dead, or having gone to another country, cannot be apprehended, and the vendee prove the publick sale, he is not liable to punishment; he must be dismissed by the king; and the owner of the thing sold without ownership shall receive the chattel from the buyer.

CULLÚCABHATTA.

A DISTINCTION will be mentioned in respect of what shall be recovered.

DECLARING the mode of justification, CA'TYA'YANA says; "let him prove a publick purchase" &c: thus clearly excluding justification by any other mode; "There is no other mode" &c. Ordeal is not sufficient proof; but the sale must be proved by human testimony. Or the sense may be, "no other proof, divine or human, shall be admitted, except the evidence of witnesses." In the absence of the vender, a paper in the vender's own handwriting is no evidence without witnesses. Is adverse possession for the space of twenty years, or the like, inadmissible proof? say not, "be it so;" for that would be inconsistent with common sense. To this some reply, that the evidence of witnesses, as the mode of proof required from the owner of a thing lost, is only mentioned illustratively by YA'JNYAWALKYA; as proof by kinsmen, in the text of CA'TYA'YANA, also denotes generally proof of a title or of previous possession. It cannot be objected, that a written document would be proof of right; for that is not admissible evidence in such a case. Neither can it be objected, that there is a distinction in the exposition given in the *Retnácara*, on the text of CA'TYA'YANA (XLIV); for that is otherwise explained by the same author.

BUT the author of the *Retnácara*, expounding kinsmen as intending proof in general, says, 'if kinsmen, that is, witnesses, cannot be produced, other evidence may be brought.' It must be considered, that, if ordeal be admissible proof, the mention of it is superfluous, since it would be comprehended in the general sense of the expression used in the text of CA'TYA'YANA.

It cannot be objected, that it is <sup>only</sup> mentioned for the sake of the order *in which different proofs are admissible*; for ordeal is directed on failure of other proof.

PROOF is declared to be by writing, by possession, or by witnesses: on failure of these several proofs, one of the several ordeals is ordained.

HUMAN testimony cannot be postponed to ordeal; it would be contrary to common sense. Thus, some person having received the stolen property of another, and, afterwards, the true owner seeing it, the possessor pleads the purchase, and to prove it offers a document in the seller's own handwriting; in that case, it would become sufficient proof. In causes concerning loans and the like, the document must be verified by comparison with another document in the same handwriting; but here, without reference to the vender, a written document cannot be given in evidence; yet the writing of a person residing at a distance would, when collated with another document in his handwriting, become evidence, after the death of the writer. Nor can it be said, that there is no difficulty in admitting a written document to be sufficient proof of property, on the part of the owner of a thing lost, since the sale regards him; and the evidence on both sides being equal, the proof fails. A document in the handwriting of a vender, who resided in a distant country, is no evidence; but if his residence be near, even his sons, acknowledging the sale made by their father, become witnesses. The word "there" shows, that secondary evidence, in neglect of the best evidence, is not admissible. It would contradict the legislator's own words; thus, if the word kinsman be used for proof in general, "there" also refers to proof. The meaning is, that, if there be possible evidence, another mode of proof (that is, proof by ordeal) shall not be admitted. What follows from the rule, that proof by ordeal is not admissible, if there be evidence, must be well examined. Thus some interpret the law.

VRĪHASPATI:—POISON is the ordeal ordained, where a thousand *pieces* have been stolen; fire, where *the theft* is a fourth less, or *seven hundred and fifty pieces*; water, where *it*

is three-fourths less, or two hundred and fifty pieces; and the balance, where half, or five hundred pieces, have been stolen.

ORDEAL being thus directed in case of an accusation of theft, and this being, in its effect, similar to a charge of theft; therefore the opinion of CHANDOSWARA is right. "There" &c. (XLVII 2) refers to witness, explained in the *Retnācara* evidence in general. As for what has been said, that if a man, alleging a written document in the seller's own handwriting, exhibit a document subscribed by a person, whose residence is in a distant country, then, a writing being no evidence, proof must be required; all that is futile, for it becomes evidence when the handwriting of the seller is proved; and here, if the handwriting be doubted, proof may be required: and if it be wished to prove the handwriting by comparison with another document; even in that case the writing may be so proved. This again is nothing to the purpose.

. WHEN neither party can adduce evidence, what shall be the decision? and when the buyer cannot justify the purchase by evidence, but the plaintiff proves his property, what shall be done? The law declares it; "the defendant not clearly proving &c." (XXXIX). If the plaintiff say, "this metallick vessel contained a thousand pieces of silver belonging to me, restore me the vessel with the money," the vessel and the money must be restored, if the defendant cannot perform ordeal; but, if he can disprove the money by ordeal or otherwise, the vessel only shall be restored. Thus some expound the law. But this is futile; for it is inconsistent with the practice of great persons. An exposition, established in one case, is applicable to another, unless there be a *sufficient* objection: under this maxim, the very rule, delivered under the title of loans and payment (Book I, v. CXCIX), is proper in this case.

FROM this text, delivered under the title of loan and payment, it appears, that, much being claimed by the creditor from the debtor, so much only, as is proved, shall be recovered: and the same is proper even in this case. The expression being general, if it be received as applicable to the whole

whole claim, then an unproved claim is surely null. It should not be objected, that the text is limited to the title of loan and payment by the use of the term *dbanī* (which commonly signifies creditor); for its literal meaning of owner is pertinent.

## LI.

**NĀREDA:—**LET not the purchaser conceal the man from whom he purchased; on that man depends his own justification: if he act otherwise, his crime is held equal, and he shall suffer the same punishment.

If he act otherwise, if he conceal the vender, his crime is equal to the crime of the vender, and he shall suffer the same punishment: *that is, the punishment of larceny to which the vender would have been liable.*

The *Retnācara*.

If the buyer be a near kinsman of the owner, shall the penalty be an amercement of six hundred *panas*, as directed for sale without ownership by a kinsman (XL); or shall he be punished as a thief? It is said, suspicion of theft being removed, if the vender be proved, although his person be concealed, there is no difficulty in saying, that the penalty for concealing his person shall be six hundred *panas*; but, if the vender be not proved, the buyer appears to be the real thief, and shall be punished as such, even though he be a near kinsman. That, however, is not indicated by this text; but, a fine or punishment being directed by the text of *CA'TYA'YANA* (XXXVIII), it appears, that he shall be punished as a thief, because his crime is equal to larceny.

WHAT is the concealment of the vender? If it consist in not particularly mentioning, that the thing was purchased through that person; why should the buyer do so? When he dishonestly buys the property of his own kinsman, from a stranger, at a low price, having been requested by the seller not to make known, that it was sold by him; the buyer might in that case conceal the man from whom he purchased, through fear of forfeiting his friendship, or from some other motive. Or the word may be explained "the written contract;"

and

and the sense may be, "let not the purchaser conceal the contract &c." and the motive for concealing it may be the apprehension of making known the very low price at which the thing was bought.

How is it known, that the contract is concealed? It is not ascertained by the mere omission of producing it, whereby a failure in justifying the purchase would imply wilful concealment; nor does it appear from the text of NA'REDA (LI), that the punishment of *larceny* is ordained for a simple failure in justifying the purchase; were it so, the offence would be equal whenever the purchase was not justified; but, this not being declared, the expression, "let not the purchaser conceal &c." cannot be so applied. To this it is answered, if the buyer in the first instance produce the contract, and afterwards, defending the suit before other arbitrators, conceal it, in this and other cases concealment is ascertained. In this case, if the purchase be proved, the purchaser, being a near kinsman, shall not be punished as a thief, but be fined six hundred *panas*, for his offence in concealing the contract.

BUT, if the owner have no proof of his property; nor the buyer, of his purchase; the claimant loses the cause: for the purchase is *not* to be justified, *until* after the claimant has proved his property.

## LII.

VRĪHASPATI: — IN a suit, where proof is deficient, the king must himself decide according to the equal, greater, or less credibility of the parties.

EMPLOYING spies in the manner mentioned under the title of bailments, and thus ascertaining the equal, greater, or less honesty, or dishonesty of the parties, the king must himself decide the suit.

The *Retnācara*.

THE meaning is this; when a buyer, sued by the owner, has produced the feller; and, the suit being continued against the feller, both parties assert their own property in the thing, but neither have sufficient proof; in such



a case this text is to be followed. The decision, where both parties are equally credible, will be mentioned : if one party be less credible, he loses the cause ; and the person, whose credibility is greater, gains it.

It is the business of a spy, assuming the appearance of a thief, or some other disguise such as that of one employed in the service of a petty prince, to insinuate himself into the friendship of the man, and detect his conversation and conduct with his relatives. Sometimes the spy says, " to day let us carry to a distant place, and sell, this chattel which has been privately obtained : " and according to his answer his conduct is to be presumed. Wise kings, or their officers, may themselves adopt other modes.

ACCORDING to this opinion, if neither party can adduce proof, their general conduct should be examined ; and thus may the suit be decided : in other cases the general conduct even of witnesses should be examined : otherwise, the king would be unjust ; and the loss would be equally borne by both parties, whenever proof is deficient. This should be examined by the wife.

BUT MISRA holds, that, if the purchase was publicly made, and the buyer cannot produce the vender, his place of abode being unknown, the buyer shall not be fined ; for he is not criminal. Who then shall have the thing ? Shall the owner have it, because his property is not annulled ? Or shall it remain in the buyer's possession, until he receive the price ? VRĪHASPATI says ; in a suit, where proof is deficient, if it be pleaded, that there are not means of ascertaining the vender's place of abode ; (if the buyer say, " I know not where the feller is ; ") the king must decide according to the equal, greater, or less credibility of the parties : the loss must necessarily be borne by both parties, according to their respective characters.

WHAT decision shall be given ? The same legislator propounds,

### LIII.

VRĪHASPATI :—If a purchase be made before <sup>2</sup> assembly of traders, with the knowledge

ficers, but from a seller whose dwelling-place is unknown; (or if a claim be made after the death of the seller *though known*),

2. The owner of the thing may recover his own property, on paying half the price given: half the value is lost to each of them; such must be the decision.

“BEFORE a publick assembly of traders;” meaning generally a market or the like. “With the knowledge of the king’s officers;” officers appointed by the king for that purpose: this also is a general expression. “From a seller, whose abode is unknown;” from one, whose dwelling is not well known. So the *Retnācara*.

IN the case of a private purchase, the buyer must restore the thing to the owner, without receiving back the price, as already mentioned.

How can the buyer be entitled to half the price according to the opinion of *SU’LAPA’NI*; since the owner’s property in effects stolen is not annulled, and the owner has not received the price? But, according to the opinion of *VA’CHESPATIBHATTA’CHA’RYA*, the buyer receives no part of the price, since the sale is null, as a sale without ownership, although the thief’s property in the thing have been transferred; or he is entitled to the whole price because he has property in the thing.

#### LIV.

**VRĪHASPATI:—**A PURCHASE from an unknown seller is one fault; negligence in keeping the thing is another; and these two faults are to be considered as just causes of loss to each.

By mentioning, that both are in fault, it is meant, that equal loss is the punishment of both faults. Thus, according to *SU’LAPA’NI*, although the owner’s property in the thing was not annulled, he pays half the price, on account of his fault in neglecting the custody of the thing; and the buyer loses

loses half the price, on account of the slight offence of buying from an unknown vender.

ACCORDING to this opinion, is not the half price, received back by the buyer, an excessive advantage? He does not receive half what remains above the loss; for the thief, not the owner, received the price from him: consequently the loss of the chattel received from the thief is the actual loss; and what the buyer receives from the owner, becomes his gain, since the owner had no concern in the sale: what is given by the owner, ought therefore to be taken by the king, as a fine. To this it is answered, since it is not fit that the king should receive the fine for the fault of neglecting the custody of the thing; and since the payment of it is necessary under this text; and since it is also necessary that the buyer should receive it from some person; the king shall cause it to be paid to him. "The king should himself decide &c." (LII). Therefore, although it might not accord with general reasoning, the buyer shall receive half the price with the approbation of a king, who governs according to law.

ACCORDING to the opinion of VA'CHESPATI BHATTA'CHA'RYA, there is no difficulty: the full property is revived, where the feller is known, by the mere production of the feller: but, in this case, full property is revived after paying half the price; and the buyer is not entitled to receive the whole price, because there has been a fault on his part.

#### LV.

MARÍCHI:—If a purchase be made by day before a publick assembly of traders, with the knowledge of the king's officers, the purchaser is justified, and acquires the absolute property.

2. BUT if he cannot produce the feller, his dwelling-place being unknown, the loss shall be borne equally by the buyer, and by the *former* owner who had lost the thing.

"His dwelling-place being unknown," or it being uncertain whether he be  
alive

alive or dead: The expression is general. If the property be not proved, what shall be the decision in the suit between the owner and the thief? The same; for both are equally in fault: and the *Retnācara* so expounds the text.

## LVI.

VISHNU:—THERE is no crime in him, who ignorantly buys *from a stranger* the goods of another: but the owner shall recover his property.

*On paying half its price* must be supplied in this rule: thus it does not relate to private purchases; if it did, it would be improper to say, that a buyer should be acquitted, without proof of a fair sale, though suspected of theft: but referring the rule to an open purchase, it coincides with the text of VRĪHASPATI (LIII); and fitly shows that the property shall be recovered on paying half the price. It cannot be said, that no fine is incurred, if a sale privately made be any how proved; but the owner shall recover his property, without paying any part of the price: and in the case of a fair sale, the proper decision is that, which is mentioned by VRĪHASPATI (LIII). A sale proved partakes of the nature of a fair sale.

MISRA says, some purchases, though made from the owner himself, are questionable: and the rule of decision is the same as in sale without ownership.

## LVII.

VRĪHASPATI:—THERE is no fault in the man, who purchases a thing, at a fair price, delivered by the owner in *the presence of credible persons*; but a fraudulent purchaser is a thief:

2. A fraudulent purchase is declared to be that, which is made at a very low price, in a private apartment, in a place out of the town, by night, in a situation where the bargain cannot be overheard, or from a man not known to be honest.

DELIVERED by the owner in the presence of credible persons: the text must

must be so supplied. By the subsequent phrase, "a fraudulent purchaser is a thief," which is expounded, purchasing in the recesses of a house, it must be understood, that a fair purchase is made in a place fit for such transactions. a very low price being mentioned in the subsequent verse, "price" in the first verse signifies a fair price. Accordingly, if a man buy a thing at a very low price, even from the owner himself, whom he has brought to his own house in the night, and whom he has deceived, he is criminal, and shall be punished as a thief. But there is no offence in a sale voluntarily made, at a low price, by an indigent man, with the approbation of great persons and such is the practice.

WHAT is the rule concerning traders, who give a little grain or the like to indigent persons distressed for subsistence and applying for a loan, and who take a writing for the debt at a high valuation, or who receive a very high price for a scarce and necessary article? Is the contract legal or not? The question is answered, as in the title of loan and payment under the text of *CA'TIA'YANA* (Book I, v XXXVII 1), interest voluntarily promised must be paid, but, if the promise have been extorted by force, such interest shall not be paid, so, in this case, a price or the like, voluntarily agreed on, stands good, but if consent have been extorted, it does not stand good. For example, a man, distressed to provide for his father's obsequies, wishes to sell his own furniture, but not *readily* finding a purchaser, applies to some person, saying, "assist my occasions," the other, hearing all the circumstances, replies, "this is your purpose, but I desire gain," and the vender rejoins, "I know, that my purpose must be accomplished by you at the expense of your own wealth, I am fully satisfied to sell at a low price." in such a case there is no offence in buying at a low price. But, should he, being of a harsh disposition and desirous of purchasing the thing at his own price, offer to a man, who cannot go elsewhere, half the price, at which such things are sold on all sides, and bid him go where he pleases *if he will not take that price*, in that case a purchase at such a price is not valid and the same must be understood of fixing an excessive price, according to the circumstances of each case. But there is no offence in traders, who keep a store of commodities for a long time, if they receive a high price, voluntarily paid for a scarce article. there is offence in obtaining a high price

by deceit, harshness, or the like. All this is stated as resulting from the reason of the law, on the exposition of the text as delivered by MISRA : it should be examined by the wise.

CHANDÉSWARA, inserting this text among those which show sale without ownership, says nothing expressly regarding it. After the text of VISNU (LVI) he inserts the following text.

#### LVIII.

NĀREDA :—AN open purchaser is clear of imputation ; but a purchase in secret is a theft.

AFTER this text, inserting the text of VRĪHASPATĪ (LVII), he subjoins the text of NĀREDA (XXXVIII) as expounding the sense of the preceding text. If the text of VRĪHASPATĪ (LVII) relate to sale without ownership, the sense is this ; “ delivered by a person pretending to be the owner.” The term (*adbyacśha*) signifies one capable of such transactions as sale and the like. Civil contract is among the senses of *acśha* in the dictionary of AMERA. According to this interpretation, “ from a man not known to be honest” (*asatab*), so expounded by CHANDÉSWARA, is pertinent in the literal sense of the terms. It is mentioned to intimate, that there is no offence, if the man, though in fact a thief, have the appearance of being no thief. But, according to the opinion of MISRA, it means, from a person not praised or revered, that is, from an infant or the like. AMERA mentions praised among the senses of *sut*. Or fraudulent purchase is here described generally.

#### LIX.

YĀJNYAWALKYA :—HE, who shall receive, from the hand of a stranger, what had been taken from him, or what he had lost, without giving notice to the king, shall be fined ninety-six *panas* of copper.

HE, who receives it, without giving notice to the king, that his property had been taken away by that person, shall be fined ninety-six *panas* ; for he is guilty of concealing a thief.

The *Retnacara*.

HE

HE shall be fined, because he deprives the king of his due.

MISRA.

A FINE is due from the thief to the king. Thus both glosses agree. A fine has been declared in the case of a sale of lost property by a stranger ; consequently there is nothing incongruous.

Is there no offence in selling a waif ? There is, if it be sold within the space of three years ; but not, if it be sold after that term : for it is proper, that another should observe the same rule which is prescribed to the king.

### LX.

MENU :—THREE years let the king detain the property, of which no owner appears, *after a distinct proclamation* : the owner, appearing within the three years, may take it ; but, after that term, the king may confiscate it.

2. HE, who says, “ this is mine,” must be duly examined ; and if, *before he inspect it*, he declare its form, number, and other circumstances, the owner must have his property ;
3. But, if he show not at what place and time it was lost, and specify not its colour, shape, and dimensions, he ought to be amerced.

It must be noticed, that, if the owner, showing the time and place and so forth, claim the thing even after three years, he may recover it, provided he had not neglected it. However, by the text of MENU, there is no offence in selling it after that term, if it be not claimed. Accordingly, since a waif is to be taken by the king, a man shall be punished, if he appropriate it without acquainting the king.

### LXI.

MENU :—ONE commodity, mixed with another, shall never be sold *as unmixed* ; nor a bad commodity, as good ; nor  
less

less than agreed on ; nor any thing kept at a distance or concealed.

Goods dyed with saffron and the like, mixed with goods dyed with safflower and similar drugs, shall not be sold as unmixed ; nor a bad commodity as good ; nor less than the weight agreed on ; nor a thing which is at a distance ; nor goods which have lost their colour : this being similar to a sale without ownership, the punishment shall be the same.

CULLU'CAHATTA.

WHAT quantity shall be taken to determine the proportion of punishment similar to that of larceny ? It is said, so much as is the proportion of the inferior commodity mixed with another ; or computing the price of good and bad commodities, so much as is the gain by selling a bad commodity at the price of a good one ; and similarly in other cases : for there is no theft in regard to the other portion of the sale.

THE law of sale without ownership being extended to this case, the fine for a kinsman is six hundred *panas*. It must be considered, in the case of sale without ownership, that, if a trifle be sold by a kinsman, the fine should not be six hundred *panas* : for this would be disproportionate. When the fine for theft would be six hundred *panas*, he should pay the same ; and it is the limit of his amercement : but where the fine for theft would be less, he should pay the same fine as a thief : and let it not be objected, that there is no argument, whence to deduce whether six hundred *panas* be intended as a less or greater amercement than the fine for theft ; it is proper, that the fine be less, since a kinsman is entitled to the use of the property.



## CHAPTER III.

### ON CONCERNS AMONG PARTNERS.

#### SECTION I.

#### ON PARTNERSHIP IN TRADE AND ADVENTURE.

##### I.

**N**AREDA:—WHEN traders, or others, jointly carry on business, it is called a concern among partners, a title of judicial procedure.

“JOINTLY,” on a joint stock.

*The Retnācara.*

THE word signifies mixed or united; for the verb *bhū* compounded with the prefix *śam* signifies mix. That union is formed by means of a joint stock, or by means of united personal efforts. Thus five traders, uniting their capital, carry on trade by purchase and sale of commodities; or five men, receiving wages, undertake jointly to assist the business of some rich person. The exposition of the *Retnācara* must be understood as illustrative of a general sense. The meaning of the text is subjoined: the expression, “and others,” comprehends officiating priests receiving a stipend and the like. The union of capital or exertion, for work, for commerce, for effecting some business, for a sacrifice or the like, or the same work performed by several persons on a joint stock, or with united labour, is a concern among partners, or is a common exertion by partners; the inflection of one case being substituted for another. Consequently the performance of the same work by two or more persons, uniting by means of joint capital and so forth, is a con-

cern or common exertion of partners (*sambhūya samut'bhāna*) ; *ś'bhā*, preceded by *samut*, signifies performance of work. Or the relative is employed in the seventh case with the sense of refuge or prop, as in the example, " resides with his preceptor : " consequently that agreement or rule, on which business is jointly conducted, is a title of law called concerns among partners. The pronoun is used in the masculine gender as in the text of VYĀSA (Chapter II, v. IV).

WITH what persons should partnership be contracted ; and with what persons should it not be contracted ? This question is answered in the subjoined text.

## II.

VRĪHASPATI:—PRUDENT men should not carry on trade, or the like, jointly with persons deficient in capacity or industry, afflicted by disease, ill fated, or destitute of friend and home ;

2. Let a man carry on business jointly with persons of high birth, able, diligent and sensible, skilled in coins, in purchase and in sale, honest and persevering.

IN all affairs, an incapable man should be excluded. An indolent man, who neglects business, though able to perform it, should in general be excluded : in some instances however, as in the duties of an officiating priest, the exclusion is not essential. The exception of a person afflicted by a distemper, which disqualifies him for business, is proper, for he is incapable : it is repeated, because the exclusion of a person, in whom disease has made its first appearance, is necessary on some occasions ; and a person afflicted by a disease indicating a taint of sin must be excluded from the performance of sacrifice, though otherwise capable, for even pure persons, jointly performing a religious rite with him, would be dishonoured, since no benefit would arise from it. Outcasts and the like should also be excluded from the performance of a sacrifice or other ceremony ; for the term is illustrative of a general meaning. " Ill fated ; " not destined to acquire wealth, gain, honour, and the like : it may be known from his

his horoscope, or from the visible result of his actions : he must be shunned in the concerns of traders and the rest. “ Destitute of friend” or protector ; such a man is excepted in concerns of trade and the like ; for, should a disposition to knavery or wickedness arise, it would not be repressed : or “ destitute of home ;” excepted in the apprehension, that such a person might abscond with the property.

“ PERSONS of high birth ;” a person sprung from an honourable family will not be disposed to break his engagements, even though his life be endangered. “ Able ;” skilled in business. “ Diligent ;” attentive to business without considering his own ease : such a person is superiour to men in general. “ Sensible ;” capable of contriving expedients, when distress occurs : even in the performance of religious rites, the ceremony miscarrying, a person acquainted with the modes of expiation or the like may be required ; other cases are obvious. “ Skilled in coins” ; explained in the *Mitácshará* stamped money, gold *nishcas* and the like ; conversant with these, and with silver coins and the rest, and skilled in distinguishing coins which contain copper or the like : in commerce his excellence is obvious ; in other affairs he is also useful. “ Skilled in purchase and in sale ;” in commerce, he, who is conversant with purchase and sale, knows the profit to be made : in other instances it must be explained according to circumstances. “ Honest, or pure,” is referred to constant, occasional, or voluntary rites, or to concerns in general.

Is not the direct precept superfluous, since partnership is of course permitted with persons different from those excepted ; or the exceptive text superfluous, since persons, different from those with whom partnership is directed, are of course excepted : and thus, is not the repetition superfluous ? No ; the exceptive text is necessary to exclude the persons *therein* described ; and the direct precept is necessary to denote, that the persons described *in it* should be sought for. All persons, different from those described in the second verse, are not to be excluded : persons not of high birth, nor yet deficient in capacity and so forth, may be admitted : but if a person of high birth and so forth be found, he should be preferred. This sense is inferible. The text is a precept of ethicks, showing present good and evil : therefore, should the precept be not observed, present evil, as loss, strife, or the like, ensues ; but it is no breach of duty : on  
the

the contrary, any how to maintain a person afflicted by disease is a duty; and there is no offence in sometimes admitting an indolent person *into partnership*, on an agreement for conducting commerce upon the stock of one, by the labour of another. It must be considered, that, if all exclude incapable persons and the rest, it follows that all *partners* must be capable: consequently a partnership may exist of persons all deficient in capacity; for none of them are incapable, compared to each other: but if, among persons of similar rank, one be superior, respect should be shown to him.

### III.

NĀREDA:—THE junction of stock is the cause of men carrying on business in partnership with a view to gain; therefore each should contribute his share to the common exertion.

“ JUNCTION of stock;” union of capital. “ Is the cause;” is the efficient means. “ Therefore,” that is, for this reason, they should make exertions in proportion to their shares. The text is so expounded by CHANDÉSWARA. Without a capital, or stock, trade cannot be carried on; therefore let all contribute wealth, and supply what is required for trade, as the hire of boats, oxen and other carriage. “ In proportion to their shares;” that is, let not one furnish the whole; as appears from a text which will be cited.

### IV.

NĀREDA:—As the share of a partner, *in the common stock, or in work*, is equal, or more, or less, in the same proportion, shall his charges, loss, and profit be *equal, increased, or diminished*.

As the share of each partner in the whole capital is less, more, or equal, so shall be his “ loss ” on the capital, by the sinking of a boat or the like: the loss shall be settled in proportion to the share of *stock*.

“ CHARGES;” necessary charges; the king’s taxes, and the hire of boats  
and

and the like. "Profit;" gain. If trade be again carried on upon the profit added to the original stock, the loss and profit is shared as abovementioned. Both texts may be applied to agriculture and the like, unless more be expended by one of the partners, of his own authority. In directing, that the charges, loss and so forth be increased or diminished, in proportion to the share of a partner in the common stock, the same is understood of labour: as is clearly expressed in the following text.

## V.

VRĪHASPATI:—As his share of the outlay is equal, greater, or less, in the same proportion, *unless there be a special agreement*, shall each partner pay charges, perform labour, and receive profit.

"CHARGES;" loss by the sinking of a boat or the like; and disbursement for the payment of the king's taxes and so forth. All this supposes, that there is no special agreement.

## VI.

YA'JNYAWALCYA:—IN a partnership among traders, who carry on business with a view to gain, let the profit and loss be distributed to each according to his share in the stock, or according to special agreement.

If there be no special agreement, the distribution must be regulated by the shares in the stock; if there be a special agreement concerning profit and loss, let the profit and loss be distributed accordingly. *The Chintāmeni.*

PROFIT and loss are mentioned as instances merely; for the reason of the law is equally applicable to labour. The *Retnācara* concurs in the same exposition, but reads, in the fourth measure of the verse, *ya'r'bá vá samudá crītau*, instead of *ya'r'bá vá samudábrītam*: it is expounded 'or as settled by a special agreement.' According to this opinion more is allowed, under a special agreement, to one of the partners, from a motive of respect or affection: but, extorted by force, such an agreement is null (Chap. II, v. X).

If there be a special agreement in respect of labour, it is expressly declared, that the contribution shall be unequal.

## VII.

NA'VEDA:—LET the partners, unless bound by a *previous* agreement, duly contribute to the stock, to the charges of living and of trade, to the deductions, and weights, and the care of valuable articles.

“STOCK;” store for purchase and sale. “Charges of living;” way charges. “Charges of trade;” hire. “Deductions” made, for particular purposes, from the joint property. “Load;” weights. “Valuable articles;” sanders wood and the like. “Duly,” as is proper. “Unless bound by agreement;” not being bound, no special agreement having been previously made.

The *Retnācara*.

“WAY charges:” if one of four partners go to a foreign country, to buy or sell, let all the partners defray his way charges; and similarly defray the charges of his maintenance while living abroad; for the reason of the law is equally applicable; and it is equally intended by the text, since the word hire signifies food in general. “Charges of trade, or *hire*,” the term is illustrative of a general meaning, comprehending the king’s taxes and the like. “Deductions” may occur where an excess has been given by mistake, and in other cases: there is no objection to the explanation of this term as intending debt: if it happen that a purchase, or the king’s taxes, cannot be supplied from the stock already accumulated, it being then necessary to contract a debt: the debt contracted by the partner sent abroad, who, though not expressly authorized, has not been restricted from contracting debts, must be paid by all the partners. But this is not mentioned in the *Retnācara*. “Load,” explained weight, intends the weights *used in commerce* and so forth. Let them provide and defray those several articles. By the expression ‘and so forth,’ gift and the like is comprehended *in the gloss*. “As is proper;” in proportion to their shares. “No special agreement having been previously made;” an agreement for exemption from labour

labour not having been made, at the time when all united *in partnership* not being bound by such an agreement.

OTHERS explain the text, " I et all apportion the vessels, the accumulation, the charges, the expence of transport and of custody, and the durable shares " If any misfortune happen, it shall not fall on one of the partners. But, if there be an agreement for proportioning the labour, all shall not perform all the work, but th y shall furnish labour respectively, according to agreement as is intimated by the concluding part of the text. Or, if there be an agreement, that one of the partners shall contribute no labour, it must be so settled.

BOTH opinions should be admitted, for they are proper and what is consist nt with common sense, though not mentioned in either exposition, must necessarily be understood as comprehended in the sense of the text.

### VIII.

VYASA — NEVER deceiving each other, present or absent, let them make sales and purchases, according to *the value* of the various articles.

HERE the privative *a* must be interposed, " not deceiving " that is, let them transact business, never deceiving each other

The Vivada Chintament.

DECEIT in the presence of the partners consists in appropriating things under false pretences, or in not making due exertions Thus, one of the partners takes a thing and says, in the presence of the rest, " I take my private property which was placed here," or he misstates the price paid for a commodity Deceit in respect to labour may be thus when sent for any business, he says, " this business is not to be performed by me," or says, " I have performed much labour, let this business be done by you " Deceit in the absence of the partners is obvious Let them proceed according to the profit between the purchase and sale of the various articles, as cloves, nutmegs, pease, wheat, cotton, grass and the like

## IX.

VRĪHASPATI: — THEY are declared to be competent arbitrators and witnesses for each other, in doubtful cases of deceit, provided they bear no enmity to either party.

“ THEY ;” the partners.

*The Retnācara.*

IF one of eight partners, being accused of deceit, does not charge a stranger with the fault, but simply denies the fraud, those partners, who are neither accusers nor accused, may officiate as arbitrators to decide on the fraud alleged ; and they may be witnesses. An exception is mentioned, “ provided they bear no enmity to either party,” to the accused or accuser. The meaning is, that, if there be any dispute concerning trade in partnership, the arbitration of the partners may in some instances be admitted ; but the evidence or arbitration of strangers or king’s officers is not forbidden.

OTHERS read the latter part of the text, “ let them not, from an impulse of hatred, expel a partner on pretence of fraud.” \* Though naturally averse from him, yet unable from modesty or other motive at first to refuse him, having thus, from false shame or other cause, once admitted a person not agreeable to them, should they, recalling their aversion, attempt to expel him on a false accusation, let the king prevent them.

How then shall he be cleared ? In the mode mentioned by VRĪHASPATI.

## X.

VRĪHASPATI:—SHOULD one of the partners be justly suspected of fraud in buying, selling, and the like, he may be cleared by ordeal : such is the rule in all controversies.

This text proposes the mode of trial. “ Justly suspected of fraud ;”

\* The text is in Sanskrit and is not translated here. It is a rule of law.



thought guilty of fraud, but with some doubt; for, if it be certain, he cannot be cleared by ordeal. If he be not cleared by popular proof, nor be convicted of fraud, he may clear himself by ordeal: it is not ordained in the first instance; for a text directs, "on failure of these several proofs, one of the several ordeals is ordained" (Chapter II). Sufficient cause of suspicion must be shown to ground *this* procedure upon; not merely, that he has been much employed in the transactions of the joint trade: this observation is grounded on the opinion of RAGHUNANDANA, in the *Dáyabbága tatwa*; "otherwise partition of heritage could never be made without ordeal, for knavery may be always apprehended."

If one of the partners, skilful in business, have with much labour transacted sales and purchases at home and abroad; and when partition is made, if he be suspected of fraud; let him not in the first instance undertake ordeal, but say; "examine the sales and purchases." Then, should his story be inconsistent, or should he allege a delivery to a person, to whom it is not proved that any thing was delivered; in this and similar instances, suspicion justly arising, a judicial procedure is proper. But otherwise, his conscience is his witness.

ORDEAL may be required in a case of fraud in regard to labour. Thus, one of several partners, bound by a previous agreement, purchases commodities in another country; another brings those commodities home; a third sells them at home; in such a concern, goods, which were brought by water on a boat, being destroyed by a storm, the partners, on hearing of it, say; "they were lost by thy neglect;" the other replies; "I did not neglect them:" in this and similar cases *ordeal is directed*. "Such is the rule in all controversies:" even in other cases, in regard to loans and so forth, if there be suspicion, the party must be cleared by ordeal or other evidence. Evidence in general is intended. So the *Retnácara* and *Chintámeni*.

# XI.

VRĪHASPATI:—WHEN the principal stock or the profits are diminished, in the case of partnership, by the act of God or of the king, that loss must be borne by all the partners in proportion to their shares.

WHEN the accused is cleared by ordeal or other evidence ; and it is proved, that the goods were lost without any neglect on his part, by the act of God or of the king ; that loss must be borne by all the partners in proportion to their original shares. He repeats what he has before said (V) ; or the word may be there understood as intending charges only (such as payment of the king's taxes and the like), not loss : but the same rule is extended to a loss which happens without negligence ; that is, a loss which happens notwithstanding the utmost exertions made to prevent it, or a loss which occurs when the partner, through inadvertence, placed the goods in a perilous situation, without suspecting the danger. According to the *Retnācāra* the first loss or diminution, mentioned in the text, intends loss of capital ; the second, loss of profit : and MISRA gives the same exposition. If the loss be total, it must be proportionally borne by all the partners ; if profit only be lost, shall it be borne by that partner, who had charge of the concern when the loss happened ? To remove this doubt, the text expresses, “ when the profits are diminished &c.” If profit be lost with capital, it is proper, on the ground of favour, that the partners should share the loss of profit ; but shall the loss of capital be borne by him, who managed the concern when the loss happened ? To remove this doubt the text expresses, “ when the principal stock is diminished &c.” The same decision should be given, when the profits are diminished by waiting for a rise or fall of price. An exception is mentioned in the following text.

## XII.

VRĪHASPATI:—BUT, if one partner, acting against or without the assent of the others, by his negligence injures the common property, he alone must indemnify all the partners.

“ WITHOUT the assent of the others,” unknown to them : so the *Cbintāmeni*. It may signify ‘ not sent to bring goods from a country where they are cheap.’ It does not intend a case, where, having gone to that country on such a mission, the partner, when returning thence, by accident, without the knowledge of the rest, meets with a dangerous place : else, a partner could never go to a foreign country, where he must act without directions from all the partners, since they would not be present.

“ AGAINST the assent of the others ;” forbidden to go at that time. For example ; one partner wishes to travel by water carriage to a foreign country : the others consent, but say, “ wait this day ; incursions are expected from the army of a foreign prince.” The person employed, nevertheless, goes that very day ; and the goods are plundered by the army of a foreign prince. In that case a fault is imputed to the partner acting against the assent of the others.

IN the case supposed, if the goods be not plundered by the forces of a foreign prince, but the boat happen to sink in a storm, what shall ensue ? It cannot be argued, that the loss must be made good by him, during whose management it occurs, because the goods are lost by a person acting against the assent of the others : the motive of forbiddance being different, the prohibition is nothing to the purpose. Not being wholly dependent on their commands, shall he not follow the road of gain, although a motive of objection be set forth, if he be able to counteract the cause of objection ? Nor should it be argued, that, were it so, the loss must be borne by all. If he had not gone that very day, the boat would not have been lost.

TO the question thus proposed the answer is, the loss of the boat, happening in a storm, is accidental and unforeseen : it is the act of God. But, if he quit the route to elude the enemy, and the boat be wrecked in consequence, he must make good the loss. Other cases must be determined on the same principle.

“ BY his negligence,” is a general expression, comprehending the act of God or of the king. It appears from this expression, that a loss, happening by the negligence of a partner not acting against or without the assent of the others, must be borne by all the partners.

### XIII.

NA'REDA :—AND what is lost by the negligence of one *partner* acting against or without the consent of all the partners, must be made good *by him*.

THE import is the same as in the preceding text. The particle is used in the sense of “ and.”

## XIV.

YAJÑYAWALKYA:—If one partner does what the others forbid or disapprove, or if he be negligent in *doing what they allow*, and the *common* property be injured, he shall make it good; but he, who preserves it from *robbers* or *other misfortune*, shall receive a tenth part of it *as his reward*.

THE property being endangered by the act of God or the king without any fault on his part, if one partner preserve it by his own exertions, he shall receive a tenth part. For example; a fire accidentally happening where the whole stock is hoarded, if one partner extinguish the fire by his own exertions, or be able to save the goods, he shall receive a tenth part as his reward. So, if he recover goods sunk by a storm in the middle of the river on their way from a foreign country, throwing himself into the water at the risk of his life, and dragging them on shore, he shall receive a tenth part. Even in the case beforementioned, if one partner, going to another province against the assent of the others, save the goods from the army of a foreign prince, by his own exertions, by insinuation, or by artifice, and gain considerable profit, it is reasonable, that he should receive a tenth part.

A TENTH part of what? It is answered, a tenth part of all the goods saved. If the partner, who goes even against the assent of the others, save the stock by eluding the enemy, or by other means, *but do not gain considerable profit*,\* shall he receive a tenth part of the stock *saved*? Since the danger arose from his own fault, he is not entitled to a tenth part. But if the boat be lost by the act of God, and he save any goods; in that case he shall receive a tenth part of those goods; and all the partners shall divide the remainder, as ordained by the following text.

## XV.

VRĪHASPATI. — If a single partner, when danger is apprehended from the act of God or of the king, preserve the common stock by his own exertion, a tenth part of it shall

\* I insert this reservation to reconcile this and the preceding paragraph.

be given to him ; and all shall have their respective shares of the remainder.

“ THEIR respective shares,” in proportion to their shares in the original stock ; and the person, who saved the common stock, shall have his share : the tenth part is as it were his reward.

#### XVI.

NA'REDA :—HE, who preserves, by his own effort, the goods of the partnership, when a calamity arises from the act of God, from robbers, from the king, or from fire, is entitled by law to a tenth part of them.

WHEN danger only arises.

*The Retnâcara.*

#### XVII.

CA'TYA'YANA :—To him, who shall preserve goods from robbers, water, or fire, a tenth part of their value shall be given : this is the rule in all sorts of property.

“ PRESERVE ;” save.

*The Retnâcara.*

SOME infer from the expression, “ all sorts of property,” that, if the several property of any person, in danger of loss, be saved by another, even in that case whoever saved it, shall have a tenth part of the property saved. That is not the opinion of CHANDE'SWARA and MISRA ; for this text appertains to the title of concerns among partners. Nor should it be argued, that, if a stranger preserve any property belonging to joint traders, from danger of loss, he shall receive a tenth part of it ; but CHANDE'SWARA and others deny the reward of a tenth part, in case of a salvage of property belonging to a single owner, as is expressly declared by them in these words ; ‘ some hold, that the rule is the same in all sorts of property, even though it belong to a single owner, but that is not admissible, because it is inconsistent

\* with the title *under which the text is placed.* This again is opposed on the same objection, that it is inconsistent with the subject; for the subject proposed is the rule of decision when one of the partners preserves the goods from robbers and the like, not when they are saved by a stranger: and it has not been so declared in the *Cāmadbēnu*, nor by HELA'YUDHA, who hold that this has the same import with the text of NĀREDA. CHANOE'SWARA and others hold, that the tenth part of the property saved shall not be received, in the case of property belonging to a single owner, which is preserved from robbers and the like. Consequently they concur with the *Cāmadbēnu* and with HELA'YUDHA.

WHAT then is meant by "all sorts of property?" The profits and the principal stock. Or it may be thus explained; there is not, in this case, any such distinction, as that which is declared under the title of loans and payment, in regard to the highest interest on gold, grain, wool, fruits, flowers and so forth: but a tenth part of any property saved shall be received, whether it be gold, precious stones, pearls, pepper, quicksilver, grain, wool, grafs or the like. This is denoted by the very expression, all sorts of property: thus the epithet "all" denies any other rule in regard to any sort of property; no distinction being any where specified between joint or several property: but it must not be objected, that, if such be the case, whence is an exception deduced in regard to the property of a single owner? It is deduced from the subject: consequently the meaning is, "this is the rule in all sorts of property, whether gold or any other commodity, belonging to persons engaged in partnership."

If any man by his own labour, save the property of partners, or of any other person, in danger of loss by water, fire, robbers or the like, what shall he receive? Although it be not ordained by the law, something should be given to him, as a token of respect, or as a recompense, on the authority of the law concerning other cases, or on the induction of common sense.

It is inferred that among ten partners, if three join in saving any property, which is in danger of being lost in a river, or of being destroyed by fire,

those three persons shall share one-tenth part only, which should be distributed in proportion to their respective exertions.

If one partner opposed the attempt of saving *the goods*, another remained silent, and the third approved the attempt, what is the law in this case? He, who opposed it, shall have no share of *the gain on those goods*: the person, who remained silent, shall have the share *regularly* allotted to him: and so shall he, who assented to the attempt; but he shall receive something more than the other, as is declared by *APASTAMBA*, in respect of those, who cause an act to be performed, who assent to it, and who actually perform it: "They all share the retribution in heaven, or hell; but there is a difference in the reward of him, with whom the act originates."

Who shall receive the share of him, who opposed the attempt? Not all the others, for there is no law to give a title to the person, who remained silent; not the salvers only, for that is inconsistent with common sense: thus, if a stranger save the property of another, which is in danger of loss by water or the like, he is not entitled to the whole; and in this case, how can the preserver be entitled to the whole, since he is a stranger in regard to the property of another? the law admits not a distinct kind of ownership founded on union of stock.

The question proposed is thus answered; the person, who opposed the attempt, shall receive his proportion of the capital stock; therefore, the capital stock shall be divided among all the partners, after giving a tenth part of it to the salvers: but the profits, after paying a tenth part to the saver, shall be divided, in proportion to their shares, among the other partners, solely excluding the person, who opposed the attempt; for it will be shown, that even a man of crooked ways forfeits the profit only.

Is this a man of crooked ways? or does he not rather intend kindness? The man of crooked ways opposes another, lest a share of the labour should fall on himself; it is proper he should lose his share of the profit: but this man opposes the attempt, to preserve his partner's life, as he would his own; he opposes it, to save him from pain, thinking the fire irresistible; why should he lose his share

share of the profit ? When he opposed the attempt, even then he forfeited his property ; the profit belongs to him, who, regardless of his partner's objections, and little valuing the preservation of his own life, plunges into water, or rushes into fire, to save the property ; but the partners, who assented, or remained silent, shall have a share, for they had not abandoned the property : it is however proper, that something be given to the partner, who opposed the attempt.

HAS he not forfeited even his principal by abandonment ? That should not be asserted, for he has not absolutely abandoned it. When the goods were carried away by water, his reflections are ; “ what can be done ? They are lost irrecoverably.” He does not abandon them by a declaration, that he has no further interest in them. Shall his condition be the same with that of a man of crooked ways ; for even that man loses the profit only ? It is not a satisfactory opinion, which deems that admissible ; for it is inconsistent with reason, that the condition of a man who intends a kindness, but is unable to traverse the water, though otherwise qualified for business, should be the same with that of a man of crooked ways. It must not be argued, that even his principal should not be given to the man of crooked ways. There is no ordinance to that effect ; for *YA'JNYAWALCYA* would have said, “ without stock,” instead of saying, “ without profit” (XVIII). Nor should it be affirmed, that this law must be understood of the case, when toil is omitted through indolence ; but, in the case supposed, even the principal is forfeited. It is not fit, that the property of one, saved by another, be retained by the saviour, without the owner's assent declared in this form ; “ take the property you have saved.” Neither should it be argued, that all profit is forfeited by obliquity of conduct ; for it is inconsistent with common sense, that a man, who had previously done nothing perverse or dishonest, and had acquired profit by his own labour, should now lose all profit, on account of his conduct in a moment of great danger. No forfeiture is incurred by opposing the attempt, from a motive of affection or the like, without fraud ; but if it be opposed from a perverse motive, the profit is forfeited : the saviour shall receive a tenth of the principal and profit.

If a partner be convicted of fraud, the loss must be made good by him : this is shown by the direction for distributing shares to all, if honest. His expulsion is *also* directed.



## XVIII.

ŸA'JNYAWALCYA:—A MAN of crooked ways let the other partners expel without profit; and let a partner, unable to act, appoint another man to act for him. \*

LET the partners expel a man of crooked ways (that is, a fraudulent partner) without profit, giving him his principal stock only: but let him, who, though not fraudulent, is unable to act, appoint for his substitute another man able to act.

The *Retnácara*.

MISRA delivers the same exposition.

A FRAUDULENT partner is of two descriptions; one who is averse from the performance of work, and one who embezzles property. In regard to performance of work a distinction must be admitted, as suggested by common sense: the fraudulent partner forfeits the profit on that part, in regard to which he offends; not the whole profit. A partner, having bought goods without fraud, sells them; and afterwards adopts fraudulent ways in his sales and purchases; but has committed no fraud in regard to the first goods: in that case he shall have a share of the profit; but he forfeits the profit on that part, concerning which the fraud was committed. In all cases, however, the fraudulent partner shall be expelled; for fraud is sufficient cause of expulsion.

If he perform the labour directed in regard to sales and purchases, but neglect the preservation of the goods, what shall follow? If there be no specifick agreement, and the share of the business regarding purchase and sale be performed by the directions of the other associates, then, should he neglect the preservation of the goods, he shall be deprived of his share in the profit; otherwise, the text would be unmeaning: and it is not restricted to neglect of business from the first day of the partnership. But, if he say, "I have skill in all other affairs, but not in the preservation of goods;" there is no perverseness in him: therefore he may partake of the profit, by

\* See v. XXXI.

their favour. Or the maxim, "let a partner, unable to act, appoint another man to act for him," may be applicable to this case: therefore, let him engage some other person to preserve the goods. On this point a distinction is mentioned.

### XIX.

NA'AREDA:—SHOULD one partner be unable to act, his heir shall undertake the work; or, if there be no heir, another partner who is *willing and able* to act; if there be no such person, all the partners.

"DISABILITY;" calamity, or incompetence: meaning calamity from a moral cause. "Heir;" the son and so forth. "If there be no heir;" if the heir be unfit or unable, or if there be no heir present, another partner, who is able to act for both, shall undertake the preservation of the stock; if there be no such person, all the partners; for partners must be necessarily understood, since it would be improper to understand "all," as intending the world at large; and, from the context, partner must be understood even in the middle of the text: thus "heir" must be understood of a partner; and the term comprehends kinsmen. If one partner be disabled, he, among the partners, who is heir to the disabled partner, should undertake his work; if he refuse it, let the king *formally* appoint him; no other can act for him, if there be an heir capable of acting. But, if there be no heir, or, if he be incapable of acting for both, let another, who is able to act for both, undertake the work. Thus "able" is pertinent: otherwise it would be unmeaning; since a capable person may be unable to act as a substitute. The appointment of the substitute is referred to the king, because there is no other person to whom it could be referred.

If there be no such capable person, let all the partners preserve the goods. The texts of YA'JNYAWALKYA and others (XIV &c.) being applicable to the present case, the saviour or saviours shall have a tenth part of the property saved. This is inferred by CHANDE'SWARA.

If partners be understood in this text, another person may not be employed at

at the choice of the principal, on whom it is incumbent to preserve the goods. This *objection* is not consistent with reason, for *even* the heir may not be employed unless he be included in the partnership. Nor should it be argued, that the same rule may extend to a separated kinsman, if there be no undivided brethren capable of acting; for such an extension of the rule has no foundation in any ordinance, or in the reason of the law. Nor should it be argued, that the rule is grounded on the reason of the law; because otherwise the word "able," in the text of NA'ARADA, would be unmeaning: it may be taken as a descriptive epithet *nearly superfluous*. If another person may not be employed at the choice of the principal; then, of course, the partners should preserve the goods, and receive a tenth part as their reward.

MISRA, thinking the application obvious, has not expressly said, that the heir, and other persons mentioned in the text, are included in the partnership. It should not be objected, that MISRA expounds the text, "should one partner die &c;" how then should another person be employed at his choice? MISRA therefore could not have contemplated such a construction. Still it is difficult to disprove the supposed disqualification of his heir not included among the partners. We therefore hold it proper in this case, to follow the exposition of CHANDÉSWARA, "If one partner be unable to act, let his heir undertake *the preservation of the stock &c*;" and in this case another person cannot be employed at his choice: but, if there be no son or near heir, a more distant heir, included among the partners, should undertake it; next, another partner able to act; or if there be no such person, all the associates. Such is the successive order. The son of a disabled partner being properly under his authority, it is not necessary, that another heir should be employed, if a son be forthcoming; but on failure of a son, he should be employed: otherwise the special mention of "heir" in the text would be an unmeaning repetition. It should not be argued, that, if another act *for a disabled partner*, although an heir exist, the text is propounded to show that the heir, complaining before the king, may prevent it. There is no argument for selecting this limited construction. If the heir refuse the undertaking, and another partner accept it, then his employment is not disputed. In fact the heir ought to perform the work, because such is the actual course; for, on the death of the father, his obligations devolve on the son: but, in his default,

fault, a substitute should be appointed. Therefore the *Retnâcara* shows, that the heir shall receive a tenth part of property saved by him. If the person be selected at the choice of the principal, he shall receive a tenth part or other reward, as may be agreed on between them: but for others, the reward is a tenth part of the property saved; for it is ordained by sages treating of the same subject. A tenth part of what? Shall it be a tenth part of the principal stock and profits; or of the profits only? On the first supposition in what does the situation of the partner differ from the situation of one who forfeits his share of profit, since the gain does not always exceed a tenth part of the principal? On the second supposition, he, who saves the stock only, would have no reward. Both objections are wrong: for the situation of the partner does differ when the gain may exceed a tenth part; and, if the principal stock only be preserved, the reward *paid* may be replaced by a share of future profit. But the rule of decision is this; a tenth part of the property saved, both the principal stock and the profit *being preserved*, shall be received by the preserver of it; and this rule concerns property saved by exertion, not by the act of God while the partner merely talked of saving it.

HIM, who embezzles the joint stock, let the partners expel without profit, after taking back the property embezzled. Loss of profit shall be his punishment; for no distinction is mentioned, in regard to fraudulent partners, in the text of YA'JNYAWALCYA (XVIII).

If any trader die, what shall be done in that case? This question is answered in the following text.

## XX.

NA'REDA :—If any travelling merchant, coming from a foreign country, should die, the king shall keep his stock, until his heir appear.

2. SHOULD he have no kinsman in a direct line, let the king deliver it to persons allied to him, or to collateral kinsmen; and if no such heir appear, let him keep it well guarded for ten years.

3. SUCH

3. SUCH property without an owner, and without a claimant as heir to the deceased, let the king, when it has been kept ten years, appropriate to his own use : thus justice will not be violated.

MISRA thus interprets the texts ; if one of several partners die, it is directed by the preceding text (XIX), that his heir, another partner, or all the partners, shall preserve the stock ; but, if all the partners die, the rule for that case is delivered in these texts (XX). According to his opinion, if one partner die, there is no reference to the king : but his partners shall preserve his stock, and deliver it, as the king is directed to do, to his heirs, near kinsmen, or collaterals : on failure of these, let it be delivered to the king, like an *escheated* inheritance.

BUT according to CHANDE'SWARA, the first text (XIX) describes the persons, who should preserve the stock of a living partner when disabled : and the rule, in case of death, is declared in the subsequent text (XX). Consequently, if one of the traders die, notice should be given to the king ; and the king shall preserve his stock, and afterwards deliver it to his heirs, when they appear ; retaining a twentieth or other portion of it (XXII), as a recompense for his care : but, on failure of heirs, he may appropriate the whole to his own use. A distinction will be mentioned in explaining another text. This is *also* to be understood of a case, where all the traders are deceased.

OTHERS hold, that, if any trader be unable to act, his son, as heir, shall perform his work ; in default of the heir, any partner, or other person, appointed by the principal, shall perform it, and receive such compensation as may be stipulated ; but, if such person be not able to act, all the partners. A tenth part being directed by *sages* for a case of salvage only, if the whole work be done, the recompense should be the half or other proportion of the profit, according to circumstances. The expression, " shall undertake it" (XIX), is not understood merely of saving the stock, but of business concerning the stock : and this has been declared by YA'JNYAWALKYA ; " Let a partner, unable to act, appoint another man to act for him ;" it is not positively required, that the substitute shall be one of the partners. But NA'-

REDĀ expressly says "another," *that he may be employed or not* according to the possibility or impossibility of appointing a kinsman, and without any further meaning; for it is troublesome to establish a distinct legal duty, while the text may be explained as a mere repetition of a meaning which was obvious. It should not be argued, because a direct precept is preferable to a vain repetition, that it is therefore necessary to establish it a royal duty to appoint the substitute, since the text would be otherwise unmeaning: were it so, since another is commanded to perform the work in default of the heir, and, if he be unable to perform it, all the partners being bound to undertake it, the last case is superfluous; but there is nothing superfluous, if it convey a general precept, since no objection exists to such an interpretation. If the man himself be unable to act, a substitute must in all cases act for him; and, if there be no heir, any person may be appointed under the text of YĀ'JNYĀWALCYA; or if none be appointed, the heirs or others, included in the partnership, are declared by NĀ'REDĀ to be the proper substitutes: but if the partner die, the rule of decision is delivered in the subsequent texts, "If any travelling merchant &c." (XX).

THIS exposition seems accurate: let it be examined by the wife. We proceed to explain the texts of NĀ'REDĀ. "Coming from a foreign country" (XX); travelling from one country to another, or arriving in a foreign country. Consequently such is the rule, if a merchant die on the road, or in a foreign country: and this is merely an instance; for nearly the same rule of proceeding must be understood, if he die in his own country. MĪSRA reads *préyād abhyāgatō'pi rā* instead of *préyād abhyāgatō vanic* the sense is the same, and obvious. What king? The king, in whose dominions the merchants have their abode? Or the king, into whose dominions they have come for the purpose of trade? The king, in whose dominions they trade, is considered as their second king, because he receives taxes and protects them: therefore that king, hearing of a merchant's death, shall preserve his stock, and send intelligence of his death to the heirs, by means of a messenger. This is inferred from the expression, "until his heir appear." If there be an heir, the property of another is like poison to the king who appropriates it; therefore he should immediately relinquish it. When the heir appears, what is to be done? The stock should be delivered to him; otherwise his appearance is useless. The following text is explicit.

## XXI.

VRĪHASPATI:—If one of the traders in partnership happen to die, his share in the stock must be produced before officers appointed by the king;

2. And when any man shall appear, calling himself heir to the deceased, let him prove his right of ownership by *the testimony of other men*, and then let him take his property.

“ OFFICERS appointed by the king” to receive taxes from foreign traders: before those officers, as a channel of communication with the king, his share of the stock must be produced by his associates. “ Heir to the deceased,” such as son or other person entitled to the succession: let him prove his right, as son, kinsman, or partner, by the testimony of other men. NA’REDA declares the distinctions of title to the succession (XX 2). If there be no kinsman in a direct line, let the king deliver it to persons allied to the deceased, his wife and the rest: on failure of these, collateral kinsmen are entitled to receive it. CHANDÉSWARA says, “ on failure of these, his collateral kinsman shall receive it:” and HELA’YUDHA says, “ on failure of paternal kinsmen, the succession devolves on the maternal uncle and the rest.” Consequently the wife, the daughter, the daughter’s son, the father, the brother and the rest, and the maternal uncle and other heirs mentioned under the head of inheritance, are entitled to receive *the stock* in the regular order of succession. In the text of NA’REDA (XX 2), “ if no such heir appear” signifies if the heir do not attend, or if it be proved, that no such heir exists.

If the stock be delivered to heirs, a part shall be retained by the king as a recompense for his care of it. VRĪHASPATI ordains it.

## XXII.

VRĪHASPATI:—LET the king receive a sixth part from the property of a *Súdra*; a ninth from that of a *Vaisya*; a twelfth from that of a *Cshatriya*; a twentieth from that of a *Bráhmaṇa*;

2. But after three years have elapsed, if no owner of the goods appear, let the king take the whole; but the wealth of a *Bráhmaṇa* he must bestow on *Bráhmaṇas*.

A SIXTH part and so forth from a *Śúdra* and the rest in order as enumerated; for it is a rule, that terms mentioned consecutively are separately referred to the correspondent terms: construction by the correspondent order of terms may be exemplified as it has been used by a great poet, and in other instances: "the charms of the lyre, of the wreath of jasmine, of the blue lily, are surpassed by her delightful voice, her smiles, and her enchanting glance." Consequently the king shall receive a sixth part from a *Śúdra*, a ninth part from a *Vaiśya*, and one part in twelve from a *Chátriya*.

How can it be said, that any part shall be received from the property of a *Śúdra*, since commerce is forbidden by *MENU* to a *Śúdra*, as a man of inferior class?

**MENU:—**A MAN of the lowest class, who, through covetousness, lives by the acts of the highest, let the king strip of all his wealth and instantly banish.

FOR commerce is declared to be the profession of a *Vaiśya*, whose class is superior to that of the *Śúdra* (Book I, v. IV). It should not be argued, that the text of *MENU* supposes times free from distress. *MENU*, permitting *Bráhmaṇas* to follow trade in times of distress, forbids the sale of liquids &c. (Translation of *MENU*, Chap. 10, v. 86); declaring the means of subsistence for a military man in times of distress, he forbids his recourse to the highest function (ibid. v. 95); and, subjoining the text quoted, *MENU* expressly directs, that a man of the lowest class, who lives by the acts of the highest, even in times of distress, shall be punished by the king.

To this it is answered, that the text must be understood of a profession different from that of the *Vaiśya*. Thus the text of *YAJÑYAWALKYA* is pertinent; "a *Śúdra* should serve twice-born men; but, if he cannot thus subsist, he may become a trader: " and the profession of a husbandman is allowed



allowed to the *Śūdra* by the *Nera-sinba purāna*, " let him rely on agriculture for his subsistence." On this ground the practice of moneylending by a *Śūdra* has been mentioned in the first book on loans and payment. In fact, at this time, men of the commercial classes being few, though a distinction has been ordained, their occupations are followed by *Brāhmanas* and by men of mixed classes. The rank of a *Śūdra* being attributed to degraded men of the military and commercial classes and to men of mixed classes, and RAGHUNANDANA acknowledging that they become *Śūdras* by the neglect of their proper duties, it is fit that a sixth part should be received by the king from them also. If men of the *Ambashtba*, *Mūrdabābbishīta* and other classes, who claim the rank of *Vaisya* and *Cshatriya*, have not for many generations performed the ceremonies ordained by the *Vēda*, in the form observed by *Śūdras*, or if they revert to the duties of their own class after expiation, the rate of the deduction ought to be regulated accordingly. But RAGHUNANDANA acknowledges that a military man, though not of a mixed class, may be degraded to the servile class, under the text of MENU,\* in which he expounds " gradually," by small degrees; " servile class," the rank of a *Śūdra*; and " *Brāhmanas*" the scripture.

MENU:—THE following races of *Cshatriyas*, by their omission of holy rites and by seeing no *Brāhmanas*, have gradually sunk among men to the lowest of the four classes.

RAGHUNANDANA also admits the same in regard to men of the commercial and other classes. But this is not the opinion of CULLU'CAHATTA. Some persons of the *Ambashtba* and other classes, observing the duties, and assuming the title, of a *Cshatriya* or *Vaisya*, act as men of the military and commercial classes; some act as persons of the servile class; and some follow the profession of their mother's class. The decision should be regulated by usage, or by the opinion of RAGHUNANDANA. More on this subject may be sought under the title of mixed classes.

" But after three years have elapsed, if no owner of the goods appear" (XXII 2): if the person, to whom notice is given, send a message, that he is

\* Erroneously cited as a text of NA'ANDA. I find it in MENU, Chapter 10, v. 43.

sick, and will subsequently attend; or send a message, or himself say, that the deceased has left a grandson, who will subsequently attend; but if no heir do appear, then let the king take the whole; but the wealth of a *Bráhmāna* he must bestow on other *Bráhmanas*: so the *Retnácara*. The meaning is, that, as the heritage of a *Bráhmāna* cannot be taken by the king, so, even in this case, he may not appropriate the escheat.

## XXIII.

MENU:—THE property of a *Bráhmāna* shall never be taken as an escheat by the king; this is a fixed law: but the wealth of the other classes, on failure of all heirs, the king may take.\*

2. LET the king take all property, to which there is no heir, except that of a *Bráhmāna*: but let him bestow the wealth of a *Bráhmāna* on priests learned in the *Védas*.

If that be the case, how is he permitted to receive a twentieth part from the property of a *Bráhmāna*? It should not be argued, that there is no offence, because it is received as wages: it is merely implied in the text quoted (XXIII 1), that the property shall not be taken, on the supposition of a title to inherit such property; but the king may even sell the stock to a *Bráhmāna*. Were it so, taxes being the wages of protection, even the receipt of taxes from a priest would be admissible. Therefore does MENU forbid it.

THAT is denied; for taxes are not the wages of protection, but are received by the king, because he has a title in the soil. Nor should it be objected, that they sometimes appear to be his wages, like sacrificial fees paid to priests. Sacrificial fees are not real wages: if they were, there would be no distinction of fees for two sacrifices equally laborious. It is dishonourable in a king, any how receiving taxes, not to protect all his subjects; as it is in any man, to omit the rites prescribed to his class, at dawn, noon and eve.

Does not the king receive his revenue from the person, who enjoys the produce of a soil, in which the king has an interest, as he receives hire of *his own* house or chattel from the person who uses it? The law has prohibited the taking of such wealth belonging to *Bráhmaṇas*; for the property of a deceased *Bráhmaṇa*, acquired by commerce, his heritage and debts, might *otherwise* be received on account of the interest the king has in the soil: but it is admitted, that the king has an original property by occupancy in his own house *now* let on hire; not merely a property as king: consequently he must avoid taking a *Bráhmaṇa's* wealth, in right of a property in it as king. This subject has been sufficiently explained. But if the wealth of a deceased *Bráhmaṇa* be not accepted by *Bráhmaṇas*, then let the king cast it into water (Book I, v. CCXXXI 2).

IN the third verse of NA'ŔEDA (XX 3) "property without an owner" is explained by CHANDE'SWARA, property the owner of which is deceased: "without a claimant as heir," without a claimant entitled to receive it. It must be understood of all persons, other than the king, who are entitled to succeed, including the fellow student in theology, as declared almost expressly under the title of inheritance.

#### XXIV.

NA'ŔEDA:—WHAT is ordained concerning one of several *persons or things*, whose nature and properties are the same, must be extended to all; for they are pronounced similar.

THE periods of detention, three years and ten years, are contradictory (XX 2 & XXII 2). The following text again propounds a different period.

#### XXV.

BAUDHA'YANA:—PROPERTY without an owner, which had not belonged to *Bráhmaṇas*, the king may take for himself, having kept it one year.

"WHICH had not belonged to *Bráhmaṇas*;" which belonged to any other than a *Bráhmaṇa*, that is, to a *Gṣatriya* and so forth.

CHANDĪSWARA thus reconciles the apparent contradiction, *in regard to the period of detention, one, three, and ten years*; the period is proportioned to the time required for the heir to appear, according to the remoteness of his residence, distant, more distant, or most distant: and MISRA gives a similar exposition.

What is distant? what, more distant? and what, most distant? It cannot be said, that, if the heir reside in the king's own dominions, his residence is simply distant; in another realm immediately adjoining, more distant; or, if another kingdom intervene, most distant. At the time, when one merchant died, a foreign realm intervened between the king's dominions, and the town whence that merchant came: since he was settled at the greatest distance, his stock must be kept ten years. Afterwards, that king happening to conquer both realms, and some merchant from the same town dying, his stock may be appropriated after keeping it one year; since the place is now included in the king's own dominions. This would be a great disparity.

THE difficulty may be reconciled on the opinion of RAGHUNANDANA, delivered in the *Udvābatatwa*, in explanation of the term "different country."

## XXVI.

*Vṛihat-MENU*:—WHERE language differs, and where a mountain or great river intervenes, it is called a different country.

2. HOWEVER near, countries parted by a river of the same name are called distinct countries by the self-existent himself:

3. And so are countries, whence intelligence is not received in ten nights.

## XXVII.

*VRĪHASPATI*:—SOME call the space of sixty *yōjanas* a distinct country;

country ; some, the space of forty *yōjanas* ; others again, the space of thirty *yōjanas*.

To reconcile the distinctions grounded on language and on distance, RA-GHUNANDANA thus explains the texts : if the three *circumstances of difference* exist, *the countries are distinct* within the distance of thirty *yōjanas* ; or if two exist, and the distance be greater than thirty *yōjanas* ; or if one exist, and the distance be not less than forty *yōjanas* : but within sixty *yōjanas*, if the language does not differ, nor a mountain or great river intervene, it is not a foreign country : so the *Suddhi Chintāmeni*.

CONSEQUENTLY this is intended by the term distant : if two of the *circumstances mentioned* exist, and the distance exceed sixty *yōjanas*, the country is more distant ; and if the three exist, most distant : but one of those circumstances must almost ever occur where the distance exceeds sixty *yōjanas*. " However near &c." (XXVI 2) ; however near, (within the space of forty *yōjanas*,) if the name of the countries differ, and a river intervene, they are called different countries. Some thus explain the texts. But others hold, that, if a river, or large body of water, of the same name with the countries, intervene (such as the river *Sindhu* and others), the countries, however near, are called distinct countries : thus the eastern bank of the dangerous river *Sindhu* is a different province from the western bank, both provinces bearing the same name with the river : and so *Pāñchanada*, or the *region of five rivers* (meaning the *Sindhu* and other streams), is the name of a country.

" AND so, whence intelligence &c." (XXVI 2) : this must be understood as a description similar to the distance of sixty *yōjanas*. Or it may be thus explained : a place within a country of the same name is distant ; no other country intervening, a bordering province is more distant ; another country intervening, the remoter province is most distant : thus north *Rāṭṭha*\* is distant from south *Rāṭṭha* ; *Magaḍha* is more distant ; *Cāśi*, most distant. Many other cases may occur, but these may be settled in a similar mode, under the texts quoted.

\* Pronounced *Rār*; the region west of the *Ekāgrā* 'bi river.

*WHAT* is the rule, if the merchant's place of abode were near? The stock must be kept so long as the heir be expected to appear. In fact, on all occasions, sufficient time should be allowed: a specifick period is merely mentioned illustratively. The king may appropriate the stock of a deceased trader, at the expiration of one year, after ascertaining from his kinsmen in the same town, that there is no heir in a distant country, if it were supposed that such an heir existed. But if it happen, that an heir afterwards appear, and proving his right of inheritance, claim the stock, what shall be done in that case? Without relying on the king's property in that stock, it should be delivered to that heir, even though it have been given to some other person; for a gift without ownership is void. Let it not be objected, that the king is consequently guilty of theft; for there is no theft in disposing of property, not knowing it to belong to another.

*SHALL* the king pay interest or not? He shall not pay interest; the text of SAMVERTA (Book I, v. LXXII) forbidding interest on a sum, which was not originally known to be due.

It must be noticed, that a specifick time is appointed by fages for the custody of stock by the king; but no specified period being appointed for the custody of it by a partner or a stranger, the principal stock would be annihilated, if such person were entitled to a tenth part of it for every moment of its custody: therefore one tenth part of it shall be received for the custody of the stock until it be sold; but, if it be abandoned in the interval, wages only shall be received. If it happen, that the goods are sold the next day after they were bought, a tenth part shall be received even for one day's custody; and the same allowance must necessarily be admitted, even for one year's custody, if the sale be made at that interval of time: for no specifick period having been appointed for custody, a share cannot be allowed on that account. Custody by the king has been ordained, not the transaction of business regarding the stock; but if the business be transacted by the king's own choice, through the channel of his officers, he shall receive a greater proportion of the stock.

## SECTION II.

ON PARTNERSHIP AMONG PRIESTS JOINTLY  
OFFICIATING AT HOLY RITES.

## XXVIII.

NA'REDA:—SHOULD a priest officiating at holy rites be disabled, let another in like manner perform his work, and receive from him the stipulated share of the gratuity.

“DISABLED;” the term is so explained in the *Retnâcara* and *Vivâda-Chin-sâmeni*. The expression, “in like manner,” extends the law of commerce to this case: but in commerce, if one partner be disabled, his work shall be performed by another; and RAGHUNANDANA, in the *Malamâsa tatwa*, admits the extension of the law for secondary cases to the primary or principal case. In the former text (XVIII) the same word signifies “disabled;” and the sequel expresses, that “the heir shall undertake the work.” The exposition therefore appears accurate.

“ANOTHER;” his son or other heir; on failure of an heir, a partner able to perform the work; or if there be none such, a stranger. This must be understood, as it has been already declared in the preceding section: but the substitute does not receive wages, as in commerce; for he would be a hireling, if he received wages generally; and a reward equal to a tenth part is not proper in this case. Thus a priest, engaged in a sacrifice, falls sick after the first day; afterwards, a substitute performs his work during ten days; if the substitute received a tenth part, and the priest, first engaged, received the whole of the residue, their rewards would be very disproportionate: but in commerce, there is no such disproportion; for the substitute is paid by the trader out of his own stock. On this consideration the sage propounds the

reward: "and receive from him &c;" meaning, that the law of commerce is not extended to this part of the case.

"STIPULATED;" what has been stipulated by the substitute for the performance of the work, and has been promised by the priest who was first engaged.

## XXIX.

VRĪHASPATI:—So, if one of several persons, jointly engaged in *sacrificing or other* work, should be disabled from acting in it, let his part of it be performed by a kinsman, or by all the other associates.

"WORK;" sacrifice or the like.

The *Retnācara*.

MISRA inserts this text with an observation, that "VRĪHASPATI declares the law generally." It is inserted by both, under the title of priests officiating at holy rites: the inference will be mentioned.

So, if one of several persons, jointly engaged in commerce or other business by a man disqualified through incapacity or otherwise, should be disabled from acting in it, his part of it should be performed by a kinsman; or, on failure of a kinsman, by all the other associates. Such is the meaning of the text.

It may be so in commercial cases; but how should that be done in the instance of a sacrifice? for, a sacrifice being performed for the benefit to accrue therefrom, it is contrary to rule, that the work of one should be performed by another; and two such rites cannot be performed at once by the same person, since it is forbidden to perform at once two rites of a different nature? The answer is, it may be performed according to the distinctions of sacrifice: if a hundred thousand sacrifices be undertaken, five or six persons being engaged to officiate as *Hótā*, or reader of the *R̥gveda*, should one be disabled, his part of the work may be performed by the others; and all admit that the *Hótā* may officiate as *Brāhmā*, or superintending priest.



If this text, expressing work generally, be considered by MISRA as relating to all cases, whether commercial or otherwise, why has it not been inserted in the first section on partnership among traders? The answer is, it is inserted here, to show, that such a rule exists in regard to partnership among priests officiating at holy rites. It should not be objected, that this text relates to commerce only, because it coincides with the text of NA'REDA on the subject of commerce (XVIII). Its application to holy rites, deduced from the comprehensiveness of the expression, cannot be abandoned; and all difficulties are removed by admitting this rule in partnership among officiating priests. SANC'HA and LIC'HITA concur also in directing the substitution of a kinsman.

## XXX.

SANC'HA and LIC'HITA:—If an officiating priest die before the sacrifice be completed, his kinsman sprung from the same original stock, or his pupil, shall complete his part of the work; but if he have no kinsman, let another priest be engaged.

It is implied, that his kinsman, or pupil, should complete his part of the work, as a favour conferred on him: if they do not perform it, another person must be sought. The next in succession need not be selected, as in cases of inheritance; for the same rule of *substitution* is applied by VRĪHASPATI to the other associates: and the law is the same in commercial cases. But if they require a share of the gratuity, it must of course be given.

Is not the text superfluous, for the general law requires, that, if the father be disabled, the son must perform what should have been done by him? No: for, should the sacrificer say, “this man has fallen sick, I appoint another to perform his part of the work, his son shall not perform it;” the text would serve to prevent such conduct. It therefore appears, that, if a priest, engaged to officiate at solemn rites, be disabled, the substitute should be appointed by him. The priest being bound to perform the rites by an engagement in this form, “I will act according to the best of my  
O o knowledge;”

knowledge ;" should he be disabled, it is proper, that he should provide the substitute: otherwise he would be guilty of a moral offence, not effecting the work he had engaged to perform: and it must be understood, that the form of appointment is this, " I engage you to perform such a work undertaken by me."

## XXXI.

YA'JNYAWALCYA:—A MAN of crooked ways let the other partners expel without profit; and let a partner, unable to act, appoint another man to act for him: this law is declared for partnership among priests, who jointly officiate at holy rites, and among husbandmen or artificers.

THIS shows, that the person, unable to act, should make the appointment: in commerce, the substitute should be chosen by him, not by the other partners; and, that law being extended to partnership among priests by the terms of the text, it appears, that the person, who is unable to act, should appoint the substitute.

VA'CHESPATI BHATTA'CHARYA holds, that another priest should be engaged by the sacrificer, if the priest, first engaged, be defiled; for his defilement disqualifies him for appointing a substitute. Even in other similar cases, another priest should be appointed by the sacrificer. But it is not incongruous to say, that another priest should be appointed with the approbation of the priest first engaged.

IF the son or pupil of the person, who is unable to act, be not equally skilled with the father in performing the rites undertaken, the sacrificer may reject him: such is the induction of common sense. But if the person, appointed by the officiating priest, be equally capable with himself, he should not be rejected: or if the sacrificer cannot produce a person superiour to him who was selected by the officiating priest, then also the person engaged by the officiating priest shall perform the work: or should the officiating priest provide a substitute equal to himself, and the sacrificer provide

provide one superiour to him, even then the person provided by the officiating priest shall perform the work; for it is not proper, that the sacrificer should now require a person of superiour qualifications. In the same mode, further rules may be established.

## XXXII.

MENU:—If an officiating priest, actually engaged in a sacrifice, abandon his work, a share only, in proportion to his work done, shall be given to him by his partners in the business, *out of their common pay*.

If he abandon his work, by reason of sickness or the like, a share of the sacrificial fee shall be given to him, in proportion to his work done.

The *Retnâcara*.

So likewise VA'CHESPATI and CULLU'CABHATTA. But if he wickedly abandon his work, a distinction is taken, which will be mentioned.

## XXXIII.

MENU:—BUT, if he discontinue his work *without fraud*, after the time of giving the sacrificial fees, he may take his full share, and cause what remains to be performed by another priest.

IN sacrifices and other holy rites celebrated according to the forms of MADHYANDINA, the fees are directed to be paid in the middle of the ceremony. In such a case, if an officiating priest be disabled after the payment of the fees, he may take his full share, and cause the work to be completed by another. Such is the exposition of CULLU'CABHATTA; but MISRA, giving the same exposition, explains "another priest," a son, &c: this, however, may be understood as also intended by CULLU'CABHATTA.

"His full share;" his share on a partition with the other officiating priests. If there be no son, what shall be done? It should not be said that, causing the work to be performed by another, the disabled priest should give

give him wages ; or, if he perform it as a favour, there is no objection to the omission of wages : but the expression, " he may take his full share," supposes the work to be completed by his own son. Were it so, the text would be superfluous. Nor should it be said, that the text intimates this distinction ; if the disability arise before the fees are paid, the sacrificer should engage another priest, and, dividing the gratuity, pay a share to each ; but if the fees have been paid, the priest, who has received his fee, may appoint another selected by himself. There is no ground for a distinct preferable right of the officiating priest, and sacrificer, to appoint the substitute before, or after, the payment of the fee. Until the sacrifice be completed, there is apprehension of failure in the ceremony : else what remained, need not be performed.

To this question some reply, the fee, received by the officiating priest, becomes his absolute property. How should the substitute, afterwards completing the work, be entitled to receive a share of it from him ; for the sacrificer's act of religion would be impaired, if he gratified one priest out of the property of another ? Therefore, should a person, different from the son or other heir, complete the work, he is entitled to receive some additional recompense from the sacrificer. The fee for a specific part of the ceremony having been already paid, how should a gratuity be afterwards payable to the substitute, since it is not ordained by the law ? This objection is wrong ; for the general law shows, that fees should be paid by way of recompense.

#### XXXIV.

*Purána*:—THE man, who obtains, by false pretences, a *Bráhma*na's recital of holy texts, or pays not the due reward, will certainly go to a region of torment.

THIS is moral law, not the law of judicial procedure ; consequently, should the sacrificer defy hell, whence shall the substitute, who completes the work, obtain his wages ? Labour unrewarded is not consistent with judicial law. Should he not therefore receive a recompense from the officiating priest ? and even though a gratuity be given to him by the sacrificer,

shall

shall he not receive a share of the fee from the officiating priest? Since MENU directs, that the priest first engaged may take his full share, a fee by way of recompense from the employer, being required by moral law, should also be established as requisite under the law of judicial procedure; for the text intends it. But when a son is the substitute, he is sufficiently recompensed by the gratuity paid to the father; consequently there is no difficulty, even though another fee be not paid.

THE substitute should be appointed by the officiating priest, even in this case (namely, where the fees have been already paid); for he has agreed to perform the work: but if the priest, not afraid of violating his engagement, refuse to appoint another person, let the sacrificer engage another priest, that his business may be effected; whether it be a sacrifice according to the forms of MADHYANDINA, or other solemn rites, such as the *jyôtiṣtôma* and the like. In this case, if the fee have not been already paid, the share should be subdivided: but, if it have been paid, it is obvious, *that the full share shall be retained, and a separate recompense be given to the substitute.*

It should not be argued, that the act is perfect at the moment when the sacrificer has engaged the priests. As hunger is not satisfied, before victuals are prepared, merely by commencing their preparation; so the benefit of solemn rites, yet unperformed, is not secured by the mere undertaking.

PAYMENT of fees in the middle of the ceremony is now practised, in conformity with the opinion of RAGHUNANDANA, at the *Durgâpûjâ*, and other festivals: the same form should be there observed in regard to the appointment of priests; for the reason of the law is equally applicable.

MENU himself propounds the shares in particular sacrifices, as an example of the distribution of fees, to which the expression, "his full share," alludes.

### XXXV.

MENU:—WHERE, on the performance of solemn rites, a specific fee is ordained for each part of them, shall he alone,

who performs that part, receive the fee, or shall all the priests take the perquisites jointly?

2. *At some holy rites, let the Adhvaryu, or reader of the Yajurveda, take the car, and the Brahmá, or superintending priest, the fleet horse; let the Hotá, or reader of the R̥gveda, take the other horse, and the Udgáta, or chanter of the Sáma-veda, receive the carriage, in which the purchased materials of the sacrifice had been brought.*
3. *A hundred cows being distributable among sixteen priests, the four chief, or first set, are entitled to near half, or forty-eight; the next four, to half of that number; the third set, to a third part of it; and the fourth set, to a quarter.*

AT those solemn rites, in which specifick fees are ordained to be paid for each part of them, at the commencement and so forth, shall he alone, for whom the fee is paid, take it; or shall he receive a deduction only, and all the priests take and divide the perquisites? On this doubt, the legislator propounds this text (XXXV 1).

CULLU'CABHATTA.

“ HE alone, who performs that part, shall receive the fee;” where specifick fees are ordained by law for each part of the rites, payable to the persons officiating as *Brabma* and so forth, they shall receive those several gratuities, whatever be the amount; and not throw the fees together, and divide the whole. The import of the subsequent phrase, “ take the perquisites jointly,” will be explained hereafter. How much shall be the fee, for whom, and at what sacrifice? To illustrate this, he himself instances one case: on preparing the sacrificial fire for those, who follow certain *śac'bas* of the *Veda*, a car should be given to the *Adhvaryu*, a fleet horse, to the *Brahmá*; and the carriage, in which the moon-plant was brought, to the *Udgáta*. therefore, lest the perspicuity of the rule be obscured, whatever fee is directed on whatever account, *that, and no other*, shall be paid. So CULLU'CABHATTA.

“ THOSE, who follow certain *śac'bas* of the *Veda*,” those, who study  
certun

certain *śac'hās* of the *Vēda*. "On preparing the sacrificial fire;" on preparing it for oblations to fire.

THE *Adhvaryu* and the rest are distinct officiating priests, whose duties are well known. The *Brahmā* and others shall not have a share of the car; nor the *Adhvaryu* and the rest, a share in the value of the *Brahmā's* horse. CULLŪ'CA BHATTA mentions a fleet horse, to show the relative inferiority of these priests, in the order in which they are mentioned. If there be no specific fee for each part of the rites, a partition shall be made as suggested by the text, "all the priests shall take the perquisites jointly." He states a case as an instance of partition: where four sets of priests officiate, the second set is entitled to half of what is receivable by the chief set, and so forth. The third set is entitled to a third of what is receivable by the first set, not to a third of the whole; for the first and second set having received three fourths, a third of the whole cannot be paid out of a quarter only. Therefore the text must be understood to mean a third of what is receivable by the first set: hence it amounts to something more than half a quarter added to a quarter of this fraction; and more than three quarters added to half a quarter of the whole sum have been distributed: a trifle remains, somewhat less than half a quarter; but the fourth set ought to receive a quarter of half the sum, or a quarter of the share receivable by the chief set; that is, half a quarter of the whole: yet there remains not so much. This difficulty is reconciled by CULLŪ'CA BHATTA, CHANDÉ'SWARA, VA'CHESPATI-MISRA and others. The word *ardha* in the masculine gender is employed in the sense of a part in general, whether more or less than half, as noticed by AMERA; from the context, it must of course signify something less than half; and it signifies a part nearly equal to half, for it is a rule, that equal parts are understood when the proportion is not specified; thus they reconcile the distribution. At the *jyōtiṣṭōma*, sixteen officiating priests are required by the law: there the *Hōtā*, *Adhvaryu*, *Brahmā* and *Udgātā*, are the four chief persons, or first set, entitled to half the fee; and the fee, directed by holy writ, consists of a hundred cows: an equal part would amount to fifty; something less than that, or forty-eight cows, shall be received by the *Adhvaryu* and the rest. The next, namely the *Maitrā-varuṇi*, *Preṣṭā*, *Brāhmanācch'hanṣi*, and *Prētipreṣṭā*, who are entitled

to half of what is received by the first set, according to all readings of the text (which differ in form not in substance\*), shall receive twenty-four cows, the difficulty being here reconciled by allotting something less *than* a quarter. The third set consisting of the *Acch'hāvāca*, *Néshā*, *Agnīd'bra*, and *Pretibarta*, shares a third part of what is receivable by the first set, or sixteen cows; and eighty eight cows have been thus distributed: the fourth set consisting of the *Gīdva*, *Unnēta*, *Potā*, and *Swabrāhmaṇya*, shares a quarter of what was receivable by the chief set, or twelve cows: thus the hundred cows are distributed. The same form is to be understood in all cases.

*Adbwaryu* &c. are sixteen denominations of persons engaged for the several parts of the solemn rites of sacrifice and so forth, explained in the law concerning religious ceremonies. Disputes among them occur at the time of appointment, not at the time of distributing the fees, for the law has obviated disputes concerning the distribution. Each should be appointed to that part of the ceremony for which he is qualified, or he may be admitted, through favour, to an office for which he is less fit.

THE distribution of cows at the *jyētiśtōma* as mentioned by *CELLU'CA-BHATTA* and others, is not merely grounded on the reason of the law, but the law itself ordains such a distribution.

### XXXVI.

**SRAUTA CA'TYA'YANA**.—TWELVE to each of the first set, six to each of the second, four to each of the third, and three to each of the last.

THIS supposes four priests in each set. It must be noticed, that if priests be engaged for the first and second set, and the others be personated by grass,† the whole fee should be divided into three parts, of which two

\* *Tad arddha llajab* entitled to half of that number, to half of that half, a phrase similar to that of "Screened by a screen." *Misra* reads *tad arddham* and notices another reading *dwayi nah* the last is however pertinent for the term may well signify entitled to one part in two. The first reading is approved by *CHANDÉSARANA* and *CELLUCABHATTA*. (I have transferred these remarks from the text to a note for the sake of avoiding too long an interruption of the sentence.)

† When a religious ceremony is performed by a single priest, he places on his right hand fifteen blades of grass to personate the superintending priest and at rites, which should be performed by four or five priests, the representatives of some of them are similarly made of grass, if the number of persons attending be insufficient.



should be given to the chief set; and one, to the second: for the law shows, that the second set should have half the quantity received by the first. So, if the first and third set only join in the work, the fee should be divided into four parts; of which three should be given to the first set; and one, to the third: or, if the concert be only between the first and fourth set, the fee should be divided into five parts, of which four should be given to the first; and one, to the fourth set: if the second and third sets only unite in performing the rites, the fee should be divided into five parts, of which three should be given to the second set; and two to the third. If the second and fourth sets only officiate, the distribution is the same, which is made when the first and second only act. If the third and fourth sets only officiate in the joint work, the fee should be divided into seven parts, of which four should be given to the third set; and three, to the fourth: so, if the first, second and third sets act together, the fee should be divided into eleven parts, of which six belong to the first set; three, to the second; and two, to the third; if the first, third and fourth sets only officiate together, the fee should be divided into nineteen parts, of which twelve belong to the first set; four to the third; and three, to the second: if the first, second and fourth set only act together, twenty-eight shares should be distributed; of which sixteen, to the first set; eight, to the second; and four, to the fourth: but, if the second, third and fourth sets only act together, thirteen shares should be distributed; of which six should be allotted to the second set; four, to the third; and three, to the fourth. If one priest only be engaged for any one of the sets, and the others of that set be personated by grāṣ, but a competent number of priests be engaged for the other sets, then, whoever performs the work of a priest personated by grāṣ, shall receive his share. This rule must be admitted in regard to all the sets; and the same method is applicable to other sacrifices. In fact, at this time, and in this province, the employment of sixteen officiating priests is little practised; but the employment of four, as directed in the *Gṛīhya-saṅgraha*, is frequent.

## XXXVII.

*The Gṛīhya-saṅgraha*.—IN gaming, in judicature, in holy fasts and solemn rites, a stranger sees what escapes the observation of the principal: therefore

2. Let one be appointed to perform the work ; let another hold the book ; let a third expound questions ; and thus let the business be conducted.

THE first text declares the motive ; in the second verse strangers are distinguished : " let one be engaged in the work," namely the spiritual teacher ; and he officiates as *Brahmā*, or *superintending priest* at the performance of sacrifice as a part of a solemn act of devotion. If the principal himself do not perform the sacrifice, the spiritual preceptor officiates as *Hótā*, *presenting the oblations*, and if the man himself do not perform the principal rite, he officiates as his substitute. One person holds the book ; and a by-stander expounds questions.

By " strangers" are denoted persons, who attend for any purpose at gaming and so forth : but in the performance of a sacrifice, since a text ordains that persons should be engaged for every part of the business, their appointment by name to particular offices must be understood. Herein RAGHUNANDANA concurs ; and the learned say, that a previous appointment, made with civility, must be understood. Consequently, if it be supposed that it is solely meant to instance persons engaged *for the performance of rites*, that is applicable to those only, who are enumerated. Therefore, they are thus counted ; first, the person engaged for the ceremony, namely the *Brahmā*, for he is appointed to check the utterance of words unsuitable to the rites, and to notice what is done, and what is omitted. If the man cannot perform the sacrifice himself, then the *Hótā* is also a person engaged for the ceremony ; for he is employed to recite texts and to offer the clarified butter. Both, being persons engaged in the work, are comprehended in the same term. A substitute is of two sorts, the *Hótā* and another person ; we have therefore said briefly, that both are comprehended in the same term, and that the employment of four officiating priests is proper. In fact, the *Brahmā* or *superintending priest* should be considered as a stranger engaged in the work ; for the *Hótā* and substitute cannot give more attention than the principal. Thus the *Brahmā* notices what is done and what is omitted ; a by-stander notes the form ; and the reader views the book, for the *Hótā* cannot attend both to the book and the oblations :  
though

though as representative of the person, for whom the ceremony is performed, he should be considered as the principal *in the rites*.

Is not the reader also appointed for the rites? The term, "appointed for the rites," must be understood as intending a person different from the reader, in like manner as one name of kine may denote cattle of that sort, and a synonymous term in the same sentence may intend cows only. Or the *Brahmá* is useful *and necessary* to preserve *due obedience* to the commands of the *Védas*, that the rites may have their effect, as a pestle is *necessary* to pound rice and other grain: but the reader is only employed, on the reason of the law, to hold the book. If a priest is not found for the employment, the *Brahmá* may be personated by grass; but, if the principal himself can remember the texts, the reader is not personated by grass. Thus "appointed for the ceremony" signifies a person employed as requisite to the effect of the rites.

"LET a third expound questions:" for example, when the *Hótá* attends not, it is asked; "what is the consequence when the *Hótá* does not attend?" Or, after the sacrifice is begun, the reader says; "resting your hands on the ground, name the Earth inaudibly." On hearing this direction, the *Hótá*, placing his hands on the ground, asks, "in this manner?" The by-stander replies; "even so," or, "not so." Such answer is the business of the by-stander, explained by AMERA, "he, who shows the forms." Let the *Brahmá* superintend the rites, noticing whether the *Hótá*, through forgetfulness, do any thing contrary to proper form. Thus are four officiating priests employed. When the work is finished, gifts shall be received by them from the person for whom the sacrifice is performed; and those gifts are called sacrificial fees (*dacshiná*), because of ability (*dacshatwa*) to produce effect.

By whom shall the fee be received; by one person? or jointly by all? On this doubt it is directed, under the text of MENU (XXXVI), that the specific fee shall be received by him, for whom it is ordained; but, where no specific fee is ordained, it shall be shared among all the priests. With this the *G'b'bandóga-paríśhita* disagrees; for it excludes the reader and the by-stander, directing the fees to be divided between the superintending priest and the person who presents the oblations.

## XXXVIII.

The *Ch'hándóga-parishista*:—THE reward, which has been ordained for him, shall be given to the *Brahmá*, or *superintending priest*, when the business is completed; and where no reward is declared, let a *vessel full of grain* or *púrna pátra* be given.

2. If another perform the office of sacrificer he shall take half the sacrificial fee; but if the principal himself perform both offices, he shall give the fee to another person.

It cannot be argued, that, *Brahmá* being explained by RAGHUNANDANA, in the *Dugótśava tatwa*, as bearing the general sense of a person who causes the rites to be performed, the reader is entitled to a share of the sacrificial fee; and, by parity of reasoning, the same follows in respect of the by-stander also. In the expression, "if the principal himself perform both offices," "both," referring to what has preceded, shows, that in the case of his performing both the office of *Brahmá* and *Hótá*, the fee should be given to another person: and that argument would be inconsistent with what is written in the *Sanśára tatwa*; "let him give the fee for the principal rite to the teacher, who superintends the rite; but if the *Hótá* be a different person from the sacrificer, no specific fee being mentioned for their separate offices, the *Brahmá* and *Hótá* shall share the sacrificial fee."

SOME hold RAGHUNANDANA'S meaning to be this; let all the priests share the perquisites, under the text of MENU (XXXV 1); but the text quoted (XXXVIII 1) is a general direction, which supposes a case where no reader is employed: for the difficulty is removed by interpreting "another person" (XXXVIII 2), another teacher by book: and this supposes a case, where the sacrifice is the principal rite; but if it be a secondary part of the rites only, the *Brahmá* and the rest not being employed in the principal ceremony, the fee for that ceremony shall be received by the reader, who is employed in it. Shall not the reader, being employed even in the sacrifice, receive a share of the sacrificial fee? And, if this be admitted, is it not inconsistent with the rule, that "the *Brahmá* and *Hótá* shall share the

the sacrificial fee?" *The answer is, where the sacrifice is only a part of the ceremony, the reader not being excluded from the perquisites of the principal rite, the fee for that sacrifice, which is only a part of the ceremony, shall be received by the Brahman and others employed in that alone: and here the reason of the law shows, that he only, who is appointed to perform a specific work, shall receive the specific fee ordained for that work. If he do not cause that specific rite to be performed, still may it not be said, that there is no obstacle to his receipt of the perquisite, making it a rule, that he, who causes the principal work to be performed, causes the part to be performed, as it is a rule, that he, who performs the principal work, performs the part? *This question is thus answered, let him receive a share of the sacrificial fee; but, in the principal rite, let the substitute and the Hôid receive a share of the gratuity allotted for that rite. The expression, "the Brahman and Hôid shall share the fee," is intended generally. Under the direction for a specific fee to the Brahman, the sacrificial fee is shared by all the priests. To remove the inconsistency with the *Cbhandaga parashita*, may not the text of, *Menu* be limited to the *tyôjishitama* and similar sacrifices? No; for *Menu* is declared pre-eminent by *Vâthaspathi*, (Book V, v. CCCXXXIII), and it is regular to explain the texts of other sages according to that law. How shall the partition be made in this case? Not in the form directed by the text above cited, "the four chief are entitled to half &c." (XXXV 3); for no mention is made, in this case, of chief, secondary, and subordinate priests. Let it not be objected, that such mention is made in the text last cited; "let one be engaged in the work &c." (XXXVII 2); for there is no difficulty in considering that text as merely intended for elucidation. To this it is answered, the numbers stated for the purpose of elucidation must be considered as satisfying that question: and there, the superintending priest and the person, who presents oblations, are first; for they are substitutes for the principal, and are together mentioned by *Raghunandana*, as first. Thus the reader is entitled to half, and the by-stander to a third, of what is receivable by the superintending priest, and by the *Hôid*. Consequently the superintending priest and the *Hôid* shall each receive three shares, and the reader a share and a half, of the whole fee divided into eight shares and a half; the two chief priests receive equal shares, but the by-stander receives one share only: how-**

ever, should there be several by-standers engaged to attend the rites, the sacrificer should himself pay a gratuity to the others ; for the text mentions one by-stander only ; “let a third expound questions” (XXXVII 2).

OTHERS again hold that the words of MENU, “ all the priests take the perquisites jointly,” relate to rites which must be performed by four priests ; for that is suggested by the subsequent text concerning solemn rites, where the plural number is used (XXXV 3 ). But the text of the *Cb'bandôga-parîśiṣṭa* relates to solemn rites performed solely by the *Brahmā* or the like ; and RAGHUNANDANA says, “ it intends generally the person who causes the rites to be performed ;” meaning rites different from sacrifice ; for, even in that case, the payment of fees being necessary, that is set forth in the expression, “ when the business is completed.”

IT must be considered, that the words of MENU, “ all the priests share the perquisites,” show a partition of perquisites in all rites, since no distinction is mentioned : and, by the mention of the chief or *first fit*, partition of the perquisite is shown in solemn rites performed by sixteen priests. The word *Brahmā* being employed in the text above cited (XXXVIII), he only receives his fee, when the sacrifice is completed : and, by parity of reasoning, the same rule will have force in other cases. There is no authority for limiting the sense of the word *Brahmā* : but, if it be taken absolutely, why may not he, who causes the rites to be performed, receive a share of the perquisites ? It is fit, that all the priests employed in the sacrifice should receive a share of the perquisites according to their employments.

SOME remark on the text, “ Let him deliver the sacrificer shed, and the furniture of it, to the officiating priest,” that even the furniture of the shed must be divided. But there is no proof from any positive ordinance, or from settled usage, that he, who causes gifts to be made, has a title in all the chattels given at a distribution of alms. It is the current practice, for the sacrificer to give separate gratuities to the superintending priest, to the reader and the rest. The sense of the text quoted (XXXVIII 1) is this ; whatever reward on whatever occasion is so ordained by the law, (at some holy rites a cow, on another occasion cloth, at other rites gold, and so forth ; )

that time, and not perform the ceremony with another priest: but, if he be hurried, he may cause that sacrifice to be finished by another; and the absent priest, who is forsaken, shall receive some trifle *as a token of respect*. Should the officiating priest wilfully absent himself, though forbidden, while the ceremony is incomplete, he shall be fined a hundred *panas*: or if he be a grievous offender, the family-priest *shall be amerced*. To priests engaged to officiate at solemn rites, but afterwards found to be afflicted by disease, degraded, insane, of ill fame, or disabled by age, favour should be shown; *but other priests should be appointed in their stead*. If the officiating priest wilfully desert the sacrificer, who is not a degraded person, *nor otherwise disqualified*, he shall incur an amercement of two hundred *panas*: and so shall the sacrificer, who forsakes the officiating priest, though he be not degraded *nor otherwise incapable of acting*. But a man should readily forsake an ignorant or *foolish* priest, though he be not degraded; and a priest may abandon a sacrificer, who gives not *due rewards*, even though *otherwise* void of offence.

some recompense in proportion to the work." This appears from the literal sense of the sage's text, and from the explanation given by MISHRA and others. What recompense shall he receive? a share of the sacrificial fee? or another gift from the sacrificer? If he receive a share of the sacrificial fee *in proportion to the work*, then, should the priest, after being engaged for the rites, absent himself on the first day, he would have no share of the sacrificial fee. Under the exposition of CHANDE'SWARA, ("the fee, payable to the person first called, shall be proportioned to the work, and be received by his heirs in the case of his death;") it is said, that a fee, proportioned to the work, shall be received by the person first called, or by his heir. Why is it declared, that, "the sacrificial fee belongs to the priest first engaged?" should it not rather be declared, as in the text of NA'REDA (XXVIII), that "he shall receive a share of the gratuity?" This text has the same import with the words of NA'REDA: the former text of SANC'HA and LIC'HITA (XXX), directing the appointment of another priest, intimates a partition of the sacrificial fee; by mentioning, in the present text, that the gratuity belongs to the priest first appointed, it is denoted, that, if the first priest return after another priest has been engaged, the first priest shall perform the work: on this consideration, it is directed, that the other priest shall receive something. If the former text (XXX) relate to the death of the priest, how can this part of the present text (XLI) apply to the case of absence; and why has CHANDE'SWARA explained it "if he die &c.?" "Die," in the former text (XXX), may be taken in an indefinite sense. Then, the text of NA'REDA coinciding with that of SANC'HA and LIC'HITA, the word explained "disabled" would signify dead? Some rule is necessary for the case of a priest unable to act; the text of NA'REDA cannot apply to a case of death; for he says, "receive from him (from the first priest) the stipulated share."

THIS first rule being applicable to the case of absence without notice, the sage delivers a second rule: "If he absent himself, after notifying the time, (a month, a fortnight, or the like) or the cause of his absence, let the sacrificer wait his return, and not perform the ceremony with another priest:" so the *Retnacara*. A priest, engaged for a sacrifice which may be performed on many different days, or for the reading of *Puranas*, or the like, being busied



that time, and not perform the ceremony with another priest: but, if he be hurried, he may cause that sacrifice to be finished by another; and the absent priest, who is forsaken, shall receive some trifle *as a token of respect*. Should the officiating priest wilfully absent himself, though forbidden, while the ceremony is incomplete, he shall be fined a hundred *panas*: or if he be a grievous offender, the family-priest *shall be amerced*. To priests engaged to officiate at solemn rites, but afterwards found to be afflicted by disease, degraded, insane, of ill fame, or disabled by age, favour should be shown; *but other priests should be appointed in their stead*. If the officiating priest wilfully desert the sacrificer, who is not a degraded person, *nor otherwise disqualified*, he shall incur an amercement of two hundred *panas*: and so shall the sacrificer, who forsakes the officiating priest, though he be not degraded *nor otherwise incapable of acting*. But a man should readily forsake an ignorant *or foolish* priest, though he be not degraded; and a priest may abandon a sacrificer, who gives not *due rewards*, even though *otherwise* void of offence.

It has been already said, that, if the officiating priest be disabled, his work should be finished by another person; the sage now declares the rule, when a priest engaged to officiate does not attend: "let the sacrificer afterwards engage another priest." If he be accidentally delayed in coming from his house; or if the sacrificer should hear, that the priest has gone to another town without giving notice that a delay in his attendance may be expected, then another priest may be appointed. But CHANDESWARA explains the text, "If one of several priests appointed to officiate at solemn rites should die or be disabled, and the sacrificer engage another priest." This (*absence*) must also be understood from the terms of the gloss "die, or be disabled." MISRA says; "if one of the officiating-priests die, let the sacrificer engage another priest:" and the meaning is, "if the priest first appointed go to another town or die, the fee belongs to him, though another priest be engaged; and the other priest, considered as a stranger, shall receive

some recompense in proportion to the work." This appears from the literal sense of the sage's text, and from the explanation given by MĪŚRA and others. What recompense shall he receive? a share of the sacrificial fee? or another gift from the sacrificer? If he receive a share of the sacrificial fee *in proportion to the work*, then, should the priest, after being engaged for the rites, absent himself on the first day, he would have no share of the sacrificial fee. Under the exposition of CHANDEŚWARA, ("the fee, payable to the person first called, shall be proportioned to the work, and be received by his heirs in the case of his death;") it is said, that a fee, proportioned to the work, shall be received by the person first called, or by his heir. Why is it declared, that, "the sacrificial fee belongs to the priest first engaged?" Should it not rather be declared, as in the text of NA'ĀREDA (XXVIII), that "he shall receive a share of the gratuity?" This text has the same import with the words of NA'ĀREDA: the former text of SANC'HA and LIC'HITA (XXX), directing the appointment of another priest, intimates a partition of the sacrificial fee; by mentioning, in the present text, that the gratuity belongs to the priest first appointed, it is denoted, that, if the first priest return after another priest has been engaged, the first priest shall perform the work: on this consideration, it is directed, that the other priest shall receive something. If the former text (XXX) relate to the death of the priest, how can this part of the present text (XLI) apply to the case of absence; and why has CHANDEŚWARA explained it "if he die &c.?" "Die," in the former text (XXX), may be taken in an indefinite sense. Then, the text of NA'ĀREDA coinciding with that of SANC'HA and LIC'HITA, the word explained "disabled" would signify dead? Some rule is necessary for the case of a priest unable to act; the text of NA'ĀREDA cannot apply to a case of death; for he says, "receive from him (from the first priest) the stipulated share."

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on work which allows not leisure, fixes a day, two days, a fortnight, or a month; and promising to attend after finishing the work, departs on that business: the sacrificer, having consented *to wait*, must not engage another priest, but must defer his business for the time *limited*. But MISRA thus expounds the text: "if any officiating priest be absent on account of business, let the sacrificer allow sufficient time *for his return*." According to his gloss and reading, the sacrificer, estimating the time and occasion *of his absence*, should so long await *his return*. The meaning is, that, estimating the time required for the completion of that business, which occasions his absence, the sacrificer should wait a little longer. On this opinion, absence, with the consent of the sacrificer, is not implied; and this part of the text has the same sense with the preceding part: but there the fee is noticed; and here it is directed, that another priest shall not be appointed. The result is, that, in case of consent, it is necessary to wait a sufficient time, as is universally acknowledged; and, even without having previously consented, the sacrificer should, if possible, wait the priest's return. According to MISRA, this is ordained by the law; and, according to the *Retnâcara*, it is *only* grounded on the reason of the law: but it is proper.

If a priest, after being engaged for a sacrifice, which allows not leisure, but should be performed on the day of full or new moon, or the like, absent himself on some urgent occasion, with, or without the assent of the sacrificer, what is to be done; for the sacrificer cannot wait, since the rites are only proper on a certain lunar day? To this question it is answered, "if he be hurried &c." (XLI). "And the absent priest shall receive some trifle;" he shall receive something as a token of respect; since, not having performed any part of the work, he is not entitled to a share of the sacrificial fee. Or something shall be given to preserve due respect, merely on account of his engagement, when the priest, prevented by business from attending *at the proper time*, afterwards does attend: this also should be understood from parity of reasoning. CHANDÊSWARA thus explains the text: "let a man, who understands the order of proceeding, cause the sacrifice to be finished by another priest; and let the priest first engaged, who went to a distant place, and has been *therefore* forsaken, receive something, from the sacrificer, as a gratification:"

tion:" that is, if the sacrificer could not wait his return. But MISRA says; if the priest be supposed to have died &c. let the sacrificer cause the ceremony to be finished by another priest; and the sacrificial fee belongs to him: but, if the priest happen to return, let the sacrificer give him some trifle. If the priest went, with the assent of the sacrificer, for five days, and afterwards another priest, knowing that rites are to be celebrated at the expiration of ten days, happen to attend, the sacrificer may cause the work to be finished by that other priest: but, after his own assent, he should not, without a sufficient cause, engage another priest, at the instigation of *other* people, or from a motive of anger or the like.

A THIRD rule is mentioned: "if the priest wilfully absent himself, though forbidden by the sacrificer, he shall be fined a hundred *panas*:" so MISRA and CHANDE'SWARA. From the insertion of two words, "wilfully" and "forbidden," it is inferred, that, if he be absent on account of urgent business, even though forbidden, he shall not be amerced: nor shall he be fined, if he absent himself, even without business, but not forbidden by the sacrificer. However, "not forbidden" may be understood as included in forbidden: thus, if he absent himself without giving notice to the sacrificer, and without business requiring his absence, even then he may be amerced. This is consistent with the reason of the law; for, as not forbidding is assenting, so it may be said, that not assenting is forbidding. It follows from the context, that another priest may be engaged; and the sacrificial fee shall be received by him, who performs the work: and it is not proper that a gratification should be given. If the officiating priest, though forbidden, absent himself, after performing some work, shall he, or shall he not, receive the fee for that work? It is answered, the payment of a fine is declared, not the forfeiture of the wages of his labour: therefore he shall receive the fee for the work performed. If he only absent himself after his engagement, does he not receive a gratification from the sacrificer? There is no need of a gratification, since he is faulty. The appointment of priests is an essential part of the rites; but it is the act of the sacrificer: the acceptance of the appointment is no part of the rites. Let it not be objected, that the appointment may perhaps be unaccepted; and, if it be not accepted, the rites produce no benefit to the sacrificer; and thence it follows, that  
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the acceptance of the appointment is a part of the rites. If they be completed, it is useless to admit it as a primary or secondary part : another priest is appointed ; and his acceptance must be *supposed*. Absence does not here intend going to another province or another town only ; but also, going to his own house, and neglecting the performance of the rites : and, if a priest, engaged in one place, and having undertaken the business, undertake other work in another place, leaving that business unfinished, it must be understood to be an offence, according to the circumstances of the case,

“ OR if he be a grievous offender &c.” if the officiating priest be a grievous offender &c. “ Or ” denotes another case. By this part of the text is denoted a man, who, was already a grievous offender ; in the former part is intended an offender on that particular occasion. CHANDÉSWARA says, that one, who was already a grievous offender, is here intended : and this should be understood as admitted by MISRA. Thus, if that officiating priest, having received an appointment for solemn rites, wilfully absent himself, the sacrificer’s family-priest, who selected persons to officiate, shall be amerced. It is the regular business of the family-priest to select officiating priests : or, in his default, a learned friend selects them. This meaning is deduced from the word family used in this place, and from such practice seen in hundreds of instances. But VA’CHESPATI says, “ the spiritual preceptor, who invested him with the mark of his class, shall be amerced : ” and the author of the *Retnácara* explains the word family in another sense ; “ the priest, whose business it is to examine the families of the officiating priests, shall be amerced.” No *essential* difference results from this exposition ; the only difference is, that it has been noticed in the *Retnácara*, that the officiating priest should be selected by the family-priest.

OTHERS thus interpret the text ; “ the family-priest, officiating at rites, shall be fined a hundred *panas*, if he offend.” Consequently the sense is, that, if the family-priest, though forbidden by the sacrificer, wilfully absent himself, while the sacrifice is unfinished, he shall be fined a hundred *panas*. This was *also* directed by the preceding part of the text, but is repeated to show a fine, if he absent himself, even though he have not been engaged *for a particular*

*ricular ceremony.* This construction will be noticed in explaining a text, which will be quoted from NA'EDA (XLIII) : but the former construction is proper, because it is delivered by authors, and is consistent with the reason of the law : therefore, should he appoint a grievous offender, he partakes of the offence. It should not be objected, that, if the offence were not previously known to the family-priest, how can there be a fault on his part ? He is faulty, because he did not make particular inquiries : and, if priests, learned in law, be selected by the sacrificer without knowing their defects, even then the family-priest should make inquiries concerning faults, which may obstruct the rites. But, if the sacrificer exclude him from that office, he is not in fault.

THE word (*upādhyāya*) is explained by MISRA the appointed spiritual preceptor ; AMERA explains it 'a teacher ;' he, from whom a disciple, resorting to him (*upētya*), learns (*adbīté*) a science, is a preceptor (*upādhyāya*) ; we apply it to any family-priest (*purōhita*). The grounds of this explanation are the mention of the word family ; no person is teacher to a whole race or family ; nor is it ordained or customary, that the teacher should select the officiating priests : but the word *upādhyāya*, in hundreds of instances, signifies *purōhita*.

" AFFLICTED by a disease," which obstructs the rites, or prevents their effect. " Of ill fame ;" abandoned on account of some offence charged against him, and the like. " Old ;" and therefore unable to act. So CHANDE'SWARA. Therefore, if a priest be engaged, without any knowledge of his malady or other disability, and it be afterwards discovered, let the sacrificer "favour him," and, with his assent, appoint another priest. The sense is the same on the reading of CHANDE'SWARA ; "favour should be shown."

THE text declares an offence in wilfully deserting a sacrificer ; but there is no offence in quitting him for urgent business : and, if the sacrificer forsake a priest not diseased, nor otherwise disabled, nor absent, he shall be fined two hundred *panas*. " Degraded" &c. comprehends generally diseased or otherwise disabled. It is proper to forsake persons,

who maliciously seek to injure the solemnity; or who, always finding fault, endeavour to spread ill reports; and other persons of similar descriptions.

“IGNORANT;” much averse from the study of the *Vēdas*, and unacquainted with the law concerning the rites at which he is to officiate, and with the rules concerning his part of those rites, and the like. If any covetous *Brāhmana* officiate at sacrifices for men of low and mixed classes, for whom *Brāhmanas* do not usually officiate, the sacrificer, having admitted him, shall not *afterwards* reject him, however ignorant he may be. Or if any learned priest, tainted with a sin committed in a former existence, consent to officiate at a sacrifice for such a person, he should be forsaken *by others*, under the authority of the text, as a foolish man; but since his foolish transgression of duty was on that man’s account, he shall not be forsaken by him: but if the foolish man had *already* violated his duty on another occasion, there is no offence in forsaking him. This and other points may be inferred from reasoning.

A PRIEST may abandon a man who gives not “due rewards” at the time of a solemnity undertaken in the previous expectation of reward. In the former part of the text it is said, that an ignorant priest may be forsaken: it must be understood, that a more learned priest attends; a man should not abandon an ignorant or foolish priest, and engage one more ignorant or foolish. In fact all this supposes knavery or wickedness: it is not proper to abandon an ignorant priest, without any misconduct on his part, and without the attendance of a learned priest: knavery must be understood as the ground of punishment.

THE amercement of two hundred *panas* directed for the sacrificer, who forsakes the officiating priest, and for the officiating priest, who forsakes the sacrificer, is inconsistent with a text quoted from MENU in the *Vivāda Retnācara* and *Vivāda Chintāmeṣu*.

## XLII.

MENU:—THE sacrificer, who forsakes the officiating priest,  
and

and the officiating priest, who abandons the sacrificer, each being able to do his work, and guilty of no grievous offence, must each be fined a hundred *panas*.

MISRA and CHANDE'SWARA reconcile the texts by saying, that "there is no inconsistency, *since the fines are regulated according to the voluntary or compulsory desertion by a rich or a poor man.*" Consequently a rich man, if the act be voluntary, must be fined two hundred *panas*; but a poor man, even though the act be spontaneous, shall be fined one hundred *panas* only, because he is unable to pay a greater fine. By "poor" is meant 'unable to pay two hundred *panas*.' If he cannot pay a hundred *panas*, what is the consequence? He may be acquitted by the surrender of all his property. Why has MENU mentioned a fine of a hundred *panas*? Constructively a greater sin being expiable by the surrender of the whole of a man's property, it is unsuitable to say that a smaller offence is not expiated. Here no favour is shown to the sacerdotal class; for it is a *Bráhmāna* that deserts the sacrificer; and it must be so settled from the very relation implied in the desertion of a sacrificer.

*Panas*, though not specified in the text, are understood, from the necessity of satisfying the question, *of what shall the fine consist?* Where the number is mentioned instead of the species, *panas* are commonly understood; for many instances of this occur; and that designation, being mentioned in the texts of other sages, is deduced from the coincidence of the rules. In this instance, the fine, directed by SANC'HA and LIC'HITA, is explained two hundred *panas*, and the inconsistency of this text is removed by saying, that the two hundred *panas* abovementioned must be understood of wilful desertion by a wealthy man: but SANC'HA and LIC'HITA also direct, that an officiating priest, deserting a sacrificer, shall be fined two hundred *panas*. They direct, that an officiating priest absenting himself, though forbidden by the sacrificer, but without absolutely forsaking him, shall be fined a hundred *panas*. But it is consistent with the reason of the law, that the amercement should be fifty *panas* only, if he be poor, and his absence be involuntary. This, however, is not specified by any sage, nor clearly expressed by any author.



NA' REDA:—OFFICIATING priests are of three sorts; *the first, an hereditary priest* honoured by former generations *with the employment of officiating priest*; *the second, appointed by the party himself*; *the third, he, who voluntarily officiates on account of previous friendship.*

2. THE officiating priest, who abandons a sacrificer, though he be not a grievous offender, nor otherwise faulty, and the sacrificer, who forsakes an officiating priest guilty of no grievous offence, shall each be fined.

3. THIS is the law for hereditary priests, and for those, who are engaged by the party himself: but there is no offence in forsaking a priest, who *unbidden* officiates of his own accord.

“HONOURED by former men;” honoured as officiating priest by former generations; an hereditary priest.

*The Vṛāda Retnācara.*

“THE second, appointed by the party himself;” one, who is appointed on the occasion of a sacrifice or solemn rite, to perform that *particular* ceremony. “He, who voluntarily officiates &c;” YAJNYADATTA, influenced by friendship or the like, and for the benefit of DEVADATTA, pays adoration to his household gods; or, at a time when he is impure, performs a sacrifice, which should be performed by him; or effects the sacrament of the son of an absent friend, even without his assent, to remove the evil, which might arise from his not being effected: it is to be understood of this and other cases. “*Nor otherwise faulty*;” this may apply to both: by fault are intended blows, enmity, dishonour, and other faults already mentioned.

Who is an hereditary priest? It should not be said, he, whom the grandfather employed, and afterwards the father, and next the man himself. If  
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the grandfather, being rich, employed ten millions of *Brāhminas*, and the grandson, being poor, cannot employ so many priests, he would incur a fine. Some hold, that "hereditary officiating priest" supposes a specific appointment in this form, "so long as my descendants and yours exist, shall you and your descendants sacrifice for me and my posterity." It is the custom, that he, whom the father called to all solemn rites, should officiate also for the son and the agreement abovementioned is not supposed. In fact the appointment is made by saying, "be my priest (*purōbīta*)," which implies a distinction opposed to an appointment in this form, "now accomplish my sacrifice." and here the word "*purōbīta*" signifies a priest employed for a long space of time. We do not determine, whether the word "I" intend *the speaker* himself only, or his race generally. If it intend his race generally, there is no dispute, because, when the father has agreed that DE'VADATTA shall sacrifice for his son, the son, forsaking him without a fault on his part, is liable to a fine and this construction is consistent with the reason of the law. If the word "I" be restricted to the speaker himself, how should the son incur a fine by forsaking the priest? Here proof must be brought from practice. A dispute arising on the subject of desertion by an officiating priest or by a sacrificer, the first says, "I have been priest (*purōbīta*) to the family for three generations," *he does not say* "an agreement was made by his grandfather, for the performance of sacrifice by me and my heirs, as long as his race should exist."

Is not such an agreement inferred from the performance of sacrifice for three generations without interruption, and does he not, for that very reason, plead the performance of sacrifice for three generations? No, such an inference cannot hold, since it is not the present practice for any person to make an agreement in that form. On this subject it is said, the usage is ascertained, as implied by this text, thus, by saying, "be my priest (or *purōbīta*)," he is fully appointed to be priest of the family for a long space of time, and, whatever be implied, the priest, so appointed by the father, shall not be forsaken by the son, unless he be guilty of some offence. This, virtually, is the sense of the text.

A PRIEST, appointed by a man himself, is of two sorts, appointed for a long space of time, or appointed for a particular ceremony. The rule va-

ries in respect of these : it is an offence, under any circumstances, to forsake a priest appointed for a long space of time, unless he commit some fault ; and it is an offence to forsake a priest appointed for a particular sacrifice, in the midst of that sacrifice.

In the gloss on the text of SANC'HA and LIC'HITA prefaced by the words, " others thus interpret the text,"\* it is intimated, that if the family-priest, or a priest appointed to that office by the sacrificer himself, should absent himself, knowing that a sacrifice is to be performed, though not engaged for it in the form directed by the law, he shall be fined ; provided no person attends as his representative. From parity of reasoning, the sacrificer should be fined, if he refuse to employ his family-priest above described.

If sacrifice have been uninterruptedly performed by father and son, as family-priest, without an express appointment in this form ; " be my family-priest," what is the consequence ? Even in this case, the law concerning hereditary priests is apposite, since such an appointment of father and son is admitted by implication.

If hereditary priesthood be liberally admitted in favour of a priest engaged by the father for a long space of time, may it not be admitted in favour of the son of a priest so engaged by the father ; thus, a dispute arising on the subject of desertion between the grandsons of the sacrificer and of the officiating priest, the grandson of the priest may offer this plea, " his grandfather employed my grandfather in sacrifices, and the office has been uninterruptedly held by us from that period ?" It may be so : for he will better gain his cause by *proof of the performance of sacrifice* for several generations, than by the same *proof* for one generation only.

SUCH being the case, where the officiating priest has three sons, and the sacrificers, or employers, are three, a partition may take place ; for, on this admission, the sacrificers, or employers, are similar to property. But if any one sacrificer refuse one of the priest's sons, what is the consequence ? It should not be argued, that, partition arising from the right of the priest's

descendants to *officiate* for the sacrificers or employers, under the authority of law and custom, the sacrificers shall be fined if they refuse their assent to the partition and, in this *1st* case, all shall be fined, since all are equally in fault. No one has mentioned a fine for parties refusing their assent to a partition. Nor should it be argued, that, since forsaking the son of a family-priest amounts to the forsaking of an hereditary family priest, the abandoning of the family-priest is a cause of amercement. No sage or author has said so. To the question thus proposed, the answer is, they must be understood to be indivisible under the text of *VYĀSA* (Book V, v. CCCLXIV), and the rational distribution, mentioned by *VRĪHASPATI* (Book V, v. CCCLXVI 6), supposes the consent of the sacrificers. Thus, if the sacrificers say nothing, they shall not be forcibly taken by one person. In fact, a distribution of sacrificers or employers, though not mentioned by authors, may be adjusted by the king on his own judgment but a distribution by lots should be preferred.

In certain towns or other places, and for particular rites, the office of priest is hereditary in some families, and partition is there customary, and should be admitted in such instances. It is the hereditary office of some persons to deliver written instructions on the forms of penance and the like, in these instances also, partition should be allowed.

*Agrabarica* \* priests and others, paying revenue to the king, hereditarily receive *tila* and the like, their right should be admitted on the same construction of law with the right of family-priests, or on the king's pleasure. As the king has property in the village, entitling him to receive revenue, so the *Agrabarica* and others have property entitling them to receive *tila* and the like. May not the king, having property, dispose of it at his pleasure, but can the *Agrabarica* do so? The king has not power to destroy the village by oppression, and his gifts and alienations are not incontestable. It is the same in respect of the *Agrabarica*. The king may indeed take the property of the subject because he is lord of the land however, as the king, though he have property in the soil, cannot take its whole produce, but has a title in a waif, though it belong to a subject, so he may take the property of subjects, though the *Agrabarica* and others have also a title in it.

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\* Priests who attend at funerals. In some districts they are called *Mahabir* or *man* in others *Mahapastur*, *Agradan*, *Pratja*, *Cantaka*, &c

IF *tila* and the like be taken by the *Āgrabārica* and others in right of a property in the village, the giver would have no benefit from the gift, any more than from the payment of the king's revenue. This is denied; property does not arise in the *tila* from the payment of the king's revenue, but a title to receive the *tila*. Property, authorizing alienation at pleasure, originates in actual receipt founded on the title to receive from such peasants, and in actual delivery by the donors. Consequently, there is no difficulty.

It is doubted whether wives and others have a title to this succession, although the partition, founded on the admission of a right vesting in *Āgrabāricas* and other officiating priests, ought to be similar to the partition of inheritance in general. As the wife's title to succession, on failure of heirs in the male line as far as the great grandson, will be declared under the head of inheritance, what should reverse her title in this instance? It should not be argued, that the wife can have no right in the village, because, as a woman, she is disqualified for the performance of holy rites, and because the wives of *Āgrabāricas* and others are totally incapable of receiving *tila* delivered as a gift to priests. The *tila* may be received, and the rites be performed, through the intervention of a substitute. Let it not be argued, that, were it so, a property in the sacrificial fee and regular dues would vest in the substitute. The wife may have the benefit of property acquired by the substitute, as a sacrificer has the benefit of rites performed by an officiating priest. However, there is this difference: the sacrificer acquires merit from rites performed by an officiating priest, and none is ever acquired by the intermediate performer of the rites; but, if the duty of the officiating priest be performed by a substitute, property in the sacrificial fee is at first vested in the substitute, and, through him, in the widow entitled thereto. It is alleged, that there is no authority for this construction. It cannot, *it is said*, be argued, that the authority, which forbids desertion, proves a property in the village, since otherwise it must be irrelevant; hence property in the sacrificial fees and the like vests in the wife as owner, and afterwards is acknowledged to vest in the substituted priest, because otherwise the sacrificer's rites could not be complete: the law, *it is said*, does not declare it an offence to forsake the wife of an officiating priest; for she is an ignorant person. That is denied, because, the descendants of an officiating priest having the same right

right to the office which they have to inheritance *in general* (on the admission of property in that office), the forsaking of an ignorant person is limited to the actual performance of the rites. It is no where seen, that, a wife and a daughter's son being left by an officiating priest, the wife shall be entitled to the remainder of the estate, and the daughter's son be entitled to the *perquisites of the office*,

If this argument be proposed, the answer is, the same text, which declared that hereditary priests should not be forsaken, excepts ignorant persons: and that authority avails not, in this case, to confer property on one who is not a learned priest. As for what is alleged, that the wife is entitled to the wealth, and that there is no settled usage entitling the daughter's son to take the office; the parity between the wealth and the office may arise from favour shown by the daughter's son and by the sacrificers, or from mistake: usage alone is no authority, unless it be confirmed by construction of *express ordinances*.

ON this point it is argued, that, as the rites cannot be performed by an ignorant or disabled person, the law directs that he shall be forsaken, intending that the rites should be performed by means of a substitute; but the ignorant person has property in the sacrificial fees and the like, as the owner of a slave has property in the wealth acquired by the slave: and this construction should be settled on the strength of the admission of a property *vesting in the heir*. The text, which ordains that "a person unable to act shall appoint another to act for him," is the foundation of *this construction*: but the property of an outcast, or other person disqualified for solemn rites, is absolutely lost, in the same manner with his right to the paternal gold, silver and the like. This will be explained in the fifth book on inheritance. Wives, and others, disqualified by sex for the performance of holy rites, cannot appoint a substitute; as a defiled person cannot perform a solemn act ordained by the *Vedas*: therefore wives have no property in the office of priest.

If the daughter of an officiating priest have a son, has that son a property in the office? If the daughter's son have such a right, then, should a daughter, likely to bear a son, and a son of the maternal great grandfa-

ther's daughter, be left, he would be entitled to the office : but that is not supported by usage nor by common sense ; and there would be no certainty in regard to what should follow, if a daughter's son be afterwards born. If it be said, the daughter's son has not such a property ; then the reason of the law is transgressed, for there is nothing to prevent the property of the daughter's son in his maternal grandfather's wealth, if it be not resisted by a right vested in some other heir, *the male descendant, the wife, or the daughter of the last possessor* ; and this office is absolutely similar to wealth.

THE text, which forbids the dismissal of an hereditary priest, does not imply, that his heirs shall not be dismissed, but implies, that a person appointed by the grandfather or other ancestor shall not be forsaken : thus no difficulty affects the terms of *the text*. That is denied ; for the practice is not such.

THEREFORE the difficulty is thus reconciled ; women are entitled to that only, for which they are qualified. In regard to the assertion, that women, being disqualified, cannot appoint a substitute, this must be understood ; being disqualified for solemn acts ordained by the *Vêdas*, they cannot appoint a substitute for such acts ; but, qualified for worldly acts, nothing prevents their appointment of a substitute for temporal *affairs* : and the right should devolve on the next in succession, under the text *quoted in another place* (Book V, v. CCCCLXXVII), and because women are dependent on men. Grain and similar property may be consumed by a woman entitled *to the succession* ; but gold, silver, and the like, should be preserved : if she cannot guard it, let it be intrusted to her husband's heir, as will be mentioned under the title of inheritance. Here, since a woman cannot preserve the office, it should be executed by her husband's daughter's son or other heir : but the produce should be enjoyed by the woman. However, should the daughter's son be at variance with his maternal grandmother, it may be executed by another person : he is not entitled to his maternal grandfather's property, if that grandfather leave a wife : and should the maternal grandmother litigate, it must be amicably adjusted.

THE usage in regard to *Magâbâritas* and others has been briefly discussed. No more express ordinance is found to determine, consistently with usage, the

the suits which arise on these subjects. If ordinances alone be received, there is no authority for establishing the right of their heirs: and many excellent persons do not admit the rules of inheritance in these cases.

“ THERE is no offence in forsaking an *unbidden* priest' who officiates of his own accord (XLIII 3).” The word is interpreted *officiating* priest in the *Vicāda Retnācara* and *Vicāda Clintāmeni*. If any *Brāhmaṇa*, of his own accord, attempt the performance of holy rites for any person, and that person, when informed of it, forbid him, the sacrificer shall not be amerced *for subsequent desertion*. But it must be considered, that, if the sacrificer, though informed of it, have not *at first* forbidden him, but afterwards, when some part of the rites has been performed, do forbid him, he shall be amerced; for not to forbid is to assent: under this rule, *his silence* amounting to full assent, the priest is absolutely appointed by himself, and it would be improper to dismiss him from that ceremony. Though it be not mentioned by authors, this is consistent with common sense.

#### LXIV.

VRĪHASPATI:—THEY are declared to be of three sorts; coming of their own accord, hereditarily employed, and appointed by the *sacrificer* himself *for that turn*: even so should the business be performed by them.

“THEY;” meaning officiating priests. “Coming;” voluntarily *officiating*. “Hereditarily employed;” appointed by former persons. “Even so should the business be performed;” that is, the rites should be performed as above mentioned. Such is the sense of the text. But some consider this text as intending concerns among partners in general; thus, the sense would be, partners are of three sorts; accidentally entering into partnership, hereditarily engaged, (as a son after the death of a father, who was engaged in partnership,) and engaged by the party himself (that is, called in by him at the commencement of the undertaking). “Even so” &c. that is, the business should be adjusted in proportion to the shares, whether equal, less, or greater.

HERE it should be considered, that, if five teachers be engaged to read holy books, and one expound the verses, and all the rest be reciting readers,



ers, gratuities are separately paid to each of them ; and something is given by strangers, who hear the recital, to the expounder of verses and the reciter either for the benefit of hearing, or from the satisfaction, which their skill in recital affords : and, according to ancient and excellent usage, strangers as well as the employer give something respectively for particular stories such as the story of LACSHMANA's eating *after his long fast*, in the recital of the *Rámáyana* ; and the story of the dwarf's begging alms, in the *Bhágavata* ; and the marriage of DRAUPADÎ in the *Mahábhárata*. In such cases, what is received both by the readers and the expounder should be *distributed* in shares : but what is given on account of peculiar excellence, or skill in recital, belongs to him to whom it is given. The share should be distributed according to the number of readers ; and the expounder shall have a half, a quarter, or some other share. At present such a custom subsists in some countries : though not declared by the law, it should be admitted on the strength of custom.

IN this case, should the expounder obtain any thing by the error of introducing a more excellent *story* on a less excellent occasion, (as LACSHMANA eating *after his long fast*, in the recital of the story of the *Mahábhárata*, what is the rule ? The answer is, if the readers assisted in the mistake, the distribution should be made as in the preceding cases ; but, if they did not assist in it, the whole belongs to the expounder ; or, if some of the readers did assist, they are entitled to shares of the reward ; and the share should be distributed according to the number of persons concerned.

FROM the mention of former persons or generations, it must be understood that the family-priest of the paternal grandfather, being superiour to others, not the priest of the maternal grandfather, should never be forsaken ; but, should there be no paternal family-priest, or no paternal wealth, and the man succeed to his maternal grandfather ; then it is proper, that he should employ his family-priest. This, however, is merely an induction of common sense, not the import of the ordinance.

THE known customs at holy places, such as *Gayá* and the like, and other countries, should be maintained in judicial procedure.

## SECTION III.

ON PARTNERSHIP IN LOANS, IN HUSBANDRY, IN ARTS,  
AND IN PLUNDER.

## XLV.

VRĪHASPATI:—THE profits of those, who *jointly* lend gold, grain, liquids, or the like, shall be proportioned to their respective shares *of the outlay*, whether equal, or more, or less: thus is the law settled.

2. WHATEVER property a man lends, with the assent of many, or whatever business he *so* causes to be performed, is considered as the act of all the partners.

ADVANCE, or "lend," is explained in the *Retnācara*, make a written contract with a view to gain. A joint loan on interest is intended: the profits shall be proportioned to the shares in the principal loan; and the same must be understood of loss: this is the settled rule and practice. What is lent to any person, with the assent of all the partners, is lent by all: and a contract, which one partner makes with the assent of all, or his acceptance of a written contract of debt from a debtor, is considered as the act of all. Consequently they all share the gain or loss on that loan; and the borrower, by that written contract, becomes debtor to all the partners; therefore, should any one of them adopt compulsory means for the recovery of the debt, he shall not be punished.

## XLVI.

AMONG persons bound jointly and severally, whoever is found, may be compelled to pay the debt.\*

\* Bṛh\* I, v. CLXXIV.

As a debt must, under this text, be paid by any one survivor, among several debtors jointly bound for the same debt; so any one survivor, among several creditors jointly advancing a loan, may, consistently with the reason of the law, recover the whole debt: but the heir, or the king, not the partner, *ultimately* receives the property of the deceased; for the case is parallel to that of partnership in trade. How then may one survivor recover the whole property? If he recover not the whole, the heir of the deceased, or the king, might take the share belonging to the deceased, out of the proportion which the survivor recovered as his own share: therefore, he should endeavour to compel payment of the whole debt. But, if the debtor declare; "this I pay thee for thy portion; the shares of the rest shall be paid hereafter;" the portion of the debt, received by the survivor, cannot be taken from him by any other person. It should not be argued, that, the recovery of a debt due to joint lenders being requisite, like the payment of a debt due from persons jointly bound for it, he shall be amerced if he neglect to recover it; but it is necessary, that the heirs of the deceased should assist in the recovery of the debt. If the heirs assisted in the recovery, the debtor could not say; "I now pay thy share:" however, a penalty for not demanding the debt will be mentioned. It should not be argued, that, if the heirs of the deceased reside in another province, then, not being present, they cannot make the demand; the debt should therefore be recovered by the survivor; and, if he accept his own share alone, he shall be amerced. The case being parallel to that of partnership in trade, it is necessary, that the king should assist in the recovery of the debt: and here the demand of payment is similar to the custody of stock in the case of partnership in trade. But, if the king violate the law, is there any fault on the part of the heirs, that the loss should ultimately fall on them? No ordinance expressly requiring, that it be recovered by the partner, it is a settled rule, that the loss must be borne by the heirs. But, in fact, according to MISRA's exposition of the text of NA'KEDA (XIX), the debt should be recovered by the partner, as the stock should be preserved in the case of partnership in trade. To neglect it, though able to recover it, is an offence; and the person, who recovers the debt, may receive a tenth part of it, as in a case of salvage.

When a loan on interest has been jointly advanced by five persons, if one die,

die; and his heir be present, the heir should conclude the transaction: but, if the successor reside in another province, then indeed the surviving partner should give notice to the king, through the means of his officers; and the king should depute thither an officer appointed by himself: but, if the king omit it, the partner in the loan should conclude the transaction, and send notice to the heir, that he may attend: however, should some cause prevent him from doing so, the partner may follow his own choice; no offence is thereby committed.

If the king conclude the transaction, he shall receive, in the order of the classes, a twentieth part from the property of a *Brāhmana*; a twelfth from that of a *Cshatriya*; a ninth from that of a *Vaishya*; and a fifth from that of a *Sūdra*. The case must necessarily be held similar to partnership in trade. Thus, in answer to the question, "who shall perform his duty, if one partner die?" the rule is propounded, "on failure of heirs, the king;" for that is shown in the case of partnership in trade. Is a tax to be paid to the king in consideration of his executing the business? In answer to this question, the rule is set forth, "let the king receive a sixth part &c." (XXII 1). But if it be foreign to the king, the difficulty is reconciled from the text before cited; "or, if there be no heir, another partner who is willing and able to act; if there be no such person, all the partners" (XIX). However, should the king forbid it, his commands must not be disobeyed: the king forbids not any thing without a special cause.

#### XLVII.

VRĪHASPATI:—To a paternal or maternal kinsman, and to a friend, a loan may be made on a pledge only; to others, with a surety, or on a contract written or witnessed.

THIS text belongs to the general title of loan and payment; for the reason of the law is equally apposite in all cases of loan.

If one of several partners in moneylending, being skilled in business, ask; "shall I singly advance a loan to the proposed borrower?" in that case, should they assent, the loan advanced is lent by all the partners: as  
is

is declared by the preceding text (XLV 2). In what mode should the loan be advanced? in what case? The legislator replies, "to a kinsman &c;" to any kinsman or friend of the partners, it should be advanced on a pledge, and one of sufficient value should be taken (Book I, v. XI). The grounds of the law are these: if the kinsman do not repay the loan, but say, "I cannot now repay it," compulsory means would be a breach of the regard due to him, and therefore the debt may be irrecoverable: but, if a pledge be taken, the debt may be recovered by the sale of it, at the expiration of the stipulated period, or at the end of eighty months or the like. From others, it is not necessary, that a pledge should be taken, he therefore mentions two modes according to the honesty, or dishonesty of the man, "to others &c." in default of a surety, a loan may be advanced to a dishonest man, on a contract written or witnessed.

#### XLVIII.

VRĪHASPATI: — *At pleasure or without a time limited for payment*, may gold or silver be lent; but liquids and grain, for a limited time by the custom of the country must the loan and the payment be regulated.

At pleasure, with, or without, a time limited for payment, may gold or silver be lent, but, for liquids and grain, a limited time is necessary

*The Retnācara*

THE time must be regulated by the custom of the country, and the payment must be regulated by the time agreed on. Under the text of HA'RI TA (Book I, v. XLIV 2) grain is doubled at the time of harvest, but, if no time have been limited, it is not more than trebled even after a hundred years: therefore grain should be lent for a time limited to the next harvest; and, if it be not repaid at the stipulated time, it may bear wheel-interest. But interest is receivable on gold, silver, or the like, at the *monthly* rate of an eightieth part, therefore it daily accumulates at that rate. Afterwards, when the debt is doubled, it should be recovered, or wheel-interest be stipulated.

VRĪHASPATI:— AFTER the time for payment has past, and when the interest ceases, *on becoming equal to the principal*, the creditor may either recover his debt, or require a new writing in the form of wheel-interest.

ON grain, though not paid at the time of harvest, interest is not *considered as having ceased, because it has become equal to the principal*; and therefore wheel-interest does not arise: but, if a time were limited, wheel-interest may be required. Interest on liquids is similar to that on grain; for, in the sequel of the text, HA'RĪ'TA ordains, that "on clarified butter, salt, and raw sugar, the interest may make the debt octuple:" and this follows from the exposition of the *Retnācara* on the text of HA'RĪ'TA. As grain is doubled at the time of harvest, and, if the debtor cannot then repay it, is trebled and not more; so is wool and cotton; but the fibres of grass, clarified butter, salt and raw sugar, in one year, become octuple. Therefore the exposition of the *Retnācara* on this text should be admitted. But reference is made to the custom of the country: a loan should not be made in such a form, in a country where such a custom exists not; for this text is superseded by the text of NA'Ā-RE-DA (Book I, v. XLV 1). In some parts of the country, grain is received back with an increase of half the loan; in others, with an increase of a quarter: the loan and payment should be so regulated.

IT must be considered, that, if a partner make a loan, in contradiction to this law, at his own pleasure, without a pledge, and without a time limited for payment, he incurs blame; as appears from the tenour of the text. But, if the other partners consent to his making the loan at his pleasure, there is no offence. Yet, if a loan be made to a kinsman without a pledge, and he endeavour to discharge the debt, but happen to be drowned with his family, the lender is not free from blame: such is the method suggested by common sense.

BUT some hold, that this text does not declare an offence, but shows how a loan should be made. That is wrong; for, were it so, the text should

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\* Book I, v. CCLV.

5. LET no prudent husbandman admit lean cattle, old, underfized, diseased, vicious, blind of one eye, or lame.
6. HE, by whose deficiency in cattle and feed a loss happens in the joint cultivation, shall indemnify all the cultivators :
7. This ancient rule has been declared for husbandmen.

THE law concerning loans has been already propounded under the title of loans and payment ; now therefore, in declaring the law of partnership in loans on interest, it is concisely delivered : such is the meaning of the text. Consequently the various cases of pledge and so forth, which have been delivered under the title of loans and payment, must also be understood under this head : therefore, should a pledge be destroyed by the fault of all the creditors, it must be made good by all, and so forth. But, should the pledge be destroyed by the fault of one of the creditors, it must be made good by him ; and if it be destroyed by the act of GOD, it is the debtor's loss : these and other rules should be considered as inductions from the reason of the law, or from express ordinances. Again ; if the debtor die, the property may be recovered from the surety : but, in this case, if any one of the creditors, from a motive of tenderness or of knavery, release the surety, the fault is his. This and other rules should be admitted.

“ HEAR the rules ;” that is, what should be done by husbandmen and others. “ Beasts of burden ;” oxen. “ Labourers ;” servants employed in the business of husbandry. “ Seed” fit for producing vegetation ; in common acceptation, it signifies grain and the like ; “ Land ;” fields on which grain is sown. “ Implements of husbandry ;” ploughs and the like. Agriculture should be conducted in partnership with persons, who are equally provided with these requisites, that no dispute may subsequently arise because less has been contributed by one partner *than by another*.

A PORTION of land reserved for grass is called “ a common pasture :” so the *Retnâcara*. Neither a common pasture, nor a place reserved for cattle, nor the king's highway *should be cultivated* : as is inferred from what precedes.

have been inserted under the title of loan and payment, immediately after the text there quoted (Book I, v. XI).

## L.

VRĪHASPATI:—WHAT has been lent by two or more jointly, must be jointly demanded by them: any one of such lenders, who refuses to join in the demand, shall forfeit his share of the interest.

If any one of the joint lenders ask; “shall a loan be made to this proposed borrower?” In that case, if the others say, “we will jointly lend it,” let all *subsequently* join in the demand of what has been so lent: but if one, though able, do not join in the demand, he shall forfeit his share of the interest. But if the authority for making or refusing loans be committed to one person, since it becomes his part to demand payment, and the act was done with a view to gain, it is not fit, that another, who does not join in the demand, should forfeit his share of the interest.

## LI.

VRĪHASPATI:—THE law concerning loans has been already propounded, and *therefore* it is now concisely delivered; hear the rules for husbandmen and others, which are thus declared:

2. Prudent men conduct cultivation in partnership with those, who are equally provided with beasts of burden, labourers, seed, land and the implements of husbandry.
3. *They should not cultivate common pastures, places reserved for cattle, nor the king's highway; let them purposely avoid barren land and fields infested by vermin:*
4. Sowing, at the proper season, land well situated to receive and retain water, capable of irrigation, surrounded with fields, and well tilled, the cultivator will enjoy a produce.

5. LET



5. LET no prudent husbandman admit lean cattle, old, underfized, diseased, vicious, blind of one eye, or lame.
6. HE, by whose deficiency in cattle and feed a loss happens in the joint cultivation, shall indemnify all the cultivators :
7. This ancient rule has been declared for husbandmen.

THE law concerning loans has been already propounded under the title of loans and payment, now therefore, in declaring the law of partnership in loans on interest, it is concisely delivered: such is the meaning of the text. Consequently the various cases of pledge and so forth, which have been delivered under the title of loans and payment, must also be understood under this head: therefore, should a pledge be destroyed by the fault of all the creditors, it must be made good by all, and so forth. But, should the pledge be destroyed by the fault of one of the creditors, it must be made good by him; and if it be destroyed by the act of GOD, it is the debtor's loss: these and other rules should be considered as inductions from the reason of the law, or from express ordinances. Again; if the debtor die, the property may be recovered from the surety: but, in this case, if any one of the creditors, from a motive of tendernefs or of knavery, release the surety, the fault is his. This and other rules should be admitted.

“ HEAR the rules; ’ that is, what should be done by husbandmen and others. “ Beasts of burden; ” oxen. “ Labourers; ” servants employed in the business of husbandry. “ Seed ” fit for producing vegetation; in common acceptation, it signifies grain and the like; “ Land; ” fields on which grain is sown. “ Implements of husbandry; ” ploughs and the like. Agriculture should be conducted in partnership with persons, who are equally provided with these requisites, that no dispute may subsequently arise because less has been contributed by one partner *than by another*.

A PORTION of land reserved for grafs is called “ a common pasture: ” so the *Retnácara*. Neither a common pasture, nor a place reserved for cattle, nor the king's highway *should be cultivated*: as is inferred from what precedes.

cedes. This is merely an incidental command respecting agriculture ; it is not here supposed to become a subject of litigation. Or it may be thus explained : if a man unite with one, who cultivates land reserved for cattle, the king may say “ why dost thou cultivate land reserved for cattle ? ” if it be answered, “ by his partner’s directions ; ” he may be reproved in these words, “ shall the town be destroyed by thee, because he directs it ? ” therefore partnership should not be formed with a man, who thus transgresses the law, and it is an offence in the partners, who share profit obtained by this breach of rule.

“ *BARREN* land ” does not even support the vegetation of grass ; how should grain be raised there by the utmost labour ? From the number of small cells, “ land infested by vermin ” affords no produce ; and the ploughs and other implements are much injured : therefore partners in husbandry should avoid such land ; or a man should avoid it, lest, on seeing the produce small, he be reproached with not having well tilled his field. This is a direction to husbandmen to avoid an unproductive soil.

Low land, capable of receiving much water, and whence the water is not early drained ; such clayey soil, surrounded with fields on all sides (that the trespasses of cattle may be prevented without trouble), and well tilled at the proper season, in the month of *Māgha* and so forth : the terms are so explained in the *Retnācara*. This text is an incidental direction for agriculture. Or, where five persons jointly undertake cultivation with their own cattle and seed respectively, and agree to divide the produce after paying the king and others their due proportions of the produce, the text is applicable to such persons ; therefore they should furnish equal proportions of seed : and, where *Brāhmanas*, or others, jointly undertake agriculture on their own fields and with their own seed-grain respectively, and the agreement is nearly the same with that abovementioned, the text is applicable to them. In the first case, let the partners in husbandry cultivate land other than common pastures and so forth ; two verses (LI 3 and 4) are intended to direct this : a direction concerning land and so forth was necessary for partners in husbandry. Both verses, propounding the mode of distinguishing land, are intended to show, that, in the third case, the land

land should be equally good. At present it often happens, that men join in cultivation for the produce of their own fields only. The direction concerning land is here a repetition of the subject of cultivation; some additional meaning is intended; that is, perfect equality is not required.

“LEAN cattle &c.” This text is applicable to the three cases,\* and is intended as an instruction to husbandmen. Thus he, who purchases cattle in the intention of cultivating land, should purchase such as are different from what is described in the text. It is incidentally mentioned: for if he possess not the price of excellent cattle, he may even accept such as are there described, to employ them on his business. If the cattle and so forth, belonging to all the partners in husbandry, be bad, they may in that case be admitted: otherwise, husbandry could not be conducted in partnership, were the cattle and so forth, belonging to every partner, bad: and it is indicated by the expression “who are equally provided &c.” (LI 2). The exception against the cattle described removes the doubt, whether cattle, being equal in number, may be admitted, though unequal in strength and other qualities: therefore parity is required, according to circumstances, in strength, qualities and number.

In the second case, the text, as explained in the *Vivāda Chintāmenī*, directs (v. LI 6), that the loss shall be sustained by him, through whose want of materials, the field has lain fallow. Thus one partner is appointed to sow one field, and the other partners being similarly appointed to different parts of the joint business, if the field remain unsown by the fault of the cattle belonging to one partner, and cannot, from the excess of rain, be sown on a subsequent day, and the field therefore remain fallow; in this case, grain, equal to the produce of similar fields, shall be deducted from his share; or if seed, furnished by one partner, be sown in a field cultivated by all the partners, and no plants vegetate, the seed being old and bad, in that case also it is his loss. In the case, where the partners join in the cultivation only, if the field of one remain unsown, from the fault of another's cattle, he is entitled to receive, from the owner of the cattle, the estimated value of a crop from that field.

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\* Cultivation by a single husbandman on his sole account, by husbandmen renting land in partnership by the separate owners of land taking the whole in partnership.

If one of the partners in husbandry be unable to act, his task should be finished by another person; for YĀ'JNYĀWALCYA says, "this law is declared for partnership among priests who jointly officiate at holy rites, and among husbandmen or artificers" (XXXI). The shares should be distributed in proportion to the cattle, or things furnished; and seed and the like should be taken in proportion to the quantity of land or the number of cattle: but, if the proportions of seed and the rest be unequal, the adjustment should be made on their value; otherwise, there can be no certainty in regard to the shares: however, should there be a specifick agreement for unequal shares, the distribution must be made accordingly. All should join in preserving the field and the like: if one refuse to contribute to its preservation, he shall forfeit his share of the profit: and profit is thus ascertained; "what remains over and above the price of cattle, feed &c," If one preserve the common stock by the utmost exertion, he shall receive a tenth part of it. Him, who has recourse to fraudulent ways, let the partners expel without profit (XXXI): consequently, should a fraud committed by one of the partners be detected after the land belonging to all the partners has been sown in the month of *Bhādra*; in that case, restoring to him his stock in seed, cattle and the like, and giving him half the produce of his own land, let them expel him: but, if they cultivate in partnership the king's land, the payment of half the produce to the partner expelled is not admitted. Should one of the partners die, let the king, or other person, according to circumstances, keep his share of the stock, and deliver it to the heirs *when they appear*. All this, premised under the head of partnership in trade, must also be understood in this case.

## LII.

VRĪHASPATI:—A MANUFACTURER of gold and silver, of baser metals, of thread, of wood, stones, and leather, or a man who is skilled in minute discrimination, is called by the learned *śilpi*, or *artisan*:

2. And, when goldsmiths and the rest exercise their arts jointly, they shall receive pay in due shares according to their work.

ONE reading gives, "a manufacturer of gold, silver, and leaves;" that is, leaves of the palm tree and the like. CHANDESWARA reads "thread" (*sūtra* instead of *patra*).

"A MANUFACTURER of gold and the rest;" one, who alters the form of the substance; who works it up, from a *shapeless* lump, into ornaments or the like. "Skilled in minute discrimination;" well acquainted with minute parts; able to distinguish the portions of copper or silver contained in gold and so forth; discriminating the smooth and good parts of leaves, wood, and the like; or minutely acquainted with the natural qualities of the substances, and able to distinguish them.

MANUFACTURE and such minute discrimination are severally called arts; but both united constitute superiour art: thus, if some goldsmith knows not the assay of gold, but makes ornaments and the like, he is an artisan; and so is one, who does not manufacture, but assays gold; and herein many unite, because many are required to confirm an assay. It is objected, since there can be no joint exertion in assaying gold and the like without property, there can be no separate head of judicial procedure; therefore the *specifick* mention of this was superfluous in discussing the title of concerns among partners. It should not be answered, when several persons are jointly employed in assaying gold belonging to any man, there is partnership: were it so, it should be mentioned under the title of non-payment of wages, for they are hired workmen. Nor should it be argued, that "skilled in minute discrimination" is not an independent term, but an epithet of "manufacturer," and that the sense is, "a manufacturer of gold and so forth, if he be skilled in his art, is called *śilpi* or artisan." Were it so, a manufacturer unskilled in his art, not being *expressly* mentioned, would be excluded from this head of judicial procedure; if skill must necessarily be supposed in all manufacturers, the epithet is superfluous; and it is irregular to employ it as a descriptive and *consequently* superfluous epithet. Nor let it be argued, that persons, who are skilled in assaying, buy and sell gold and the like; by their skill in assay distinguishing bad gold from good, they buy cheap and sell dear; and thus the mention of skill in assay has a reference to stock. Were it so, this would fall under the head of partnership in trade. To the objection thus proposed the an-

fewer is, when gold or the like is intrusted to a goldsmith to work into ornaments and the like, and he receives hire in proportion to the specific quantity ascertained by weight or otherwise, he is called a workman, but of a different description from those named in treating of slaves and hired servants. Some persons assay gold and the like for many different traders; they are not the particular servants of any one man, but receive pay in proportion to the specific quantity ascertained by weight or otherwise, and are called artisans: at present such persons are often seen in the employment of sorters of money. From the practice of such a science, do they become artisans? This, like the manufacture of ornaments and other arts, not being included among the eighteen sciences, should be considered as a mechanical art.

Thus some expound the text. Others explain the term, "skilled in gain," that is, well acquainted with the wages due to his labour, and this knowledge is an excellent qualification for an artisan. The sense is the same on the reading of CHANDE'SWARA and others, "well knowing the fruit of his labour" (*pbalābbhinya*, instead of *calābbhinya*).

JITE'NDRIYA, HELA'YUDHA and VA'CHESPATI-MISRA read "base metals" instead of silver (*cūpya* instead of *rūpya*). There is no material difference. Leather is in the plural number to imply other substances, for rope, balls of silk, bones and other things must be understood, according to the circumstances of the case. otherwise, there would be no particular rule for such arts.

"According to their work" (LII 2): according to the work performed by four partners respectively, they shall receive their respective shares. For example, one melts the metal, another hammers the mass of gold or the like into the form of ornaments, a third folders the parts, and a fourth prepares the parts to be foldered. They shall receive pay according to the work thus, or otherwise, distributed.

### LIII.

CA'TYA'YANA.—If four artisans be jointly employed, a young apprentice,

apprentice, a more experienced scholar, a good artist, and a teacher, they shall receive in order one share, two, three, and four shares, of the pay *divided into ten parts*.

THESE four (the apprentice, the scholar, the artist and the teacher) are distinguished by their skill in manufacture.

*The Retnâcara.*

THEREFORE the pupils, who melt metals, and so forth, under the directions of a teacher or other artist, receive one share: and the pupil should neither be the apprentice of another, nor one maintained by the instructor himself; consequently there is no contradiction to the text, which ordains, that the teacher shall receive the gain on his pupil's labour (Book III, Chapter I, v. XX). But some hold, that the pupil's share is mentioned in contradistinction to the more experienced scholar and good artist; and that the pupil's share shall be received by the instructor.

THE more experienced scholars, already taught, execute coarse work; they are inferior to the good artist, because they are unable to execute fine work. The good artists, having acquired experience, and being already skilled in manufacture, execute fine work, such as foldering the parts: in short, they nearly accomplish the business. The teachers instruct all the workmen as pupils; or, equal to the good artists, they also know the quantity of the parts, and are therefore, in so much, superior to them.

If there be an apprentice and teacher only, and no experienced scholar, or good artist, what is the rule in that case? Who executes the work of the experienced scholar and good artist? If the apprentice do it, he is an artist: therefore the teacher should receive four shares; and the artist, three shares of the pay divided into seven parts. If he do not cause him to execute the work of a good artist, the teacher should be punished. But if there be a specifick agreement in this form; "thou shalt only perform the work of an apprentice," the work of the experienced scholar and good artist being executed by the teacher, he shall receive nine shares; and the pupil, one share only. If the apprentice execute the work of an experi-

enced scholar, and the teacher perform his own part, and that of a good artist, the apprentice shall receive three shares; and the teacher, seven *shares of the pay divided into ten parts*. In fact the definitions of apprentice and the rest are delivered in conformity with the etymological sense of the terms; but he, who, under the directions of another, any how executes work with occasional mistakes, is an apprentice, if he be subordinate to another. He, who, previously instructed, but, from want of practice in the particular exertion of manual labour, being incapable of fine work, executes business slowly, is called "a more experienced scholar." He, who is capable of executing work, and is practised in the application of manual labour, but sometimes has occasion to ask instructions, is called a good, a skilful, or an able, artist. But the instructor, like a teacher of the *Vedas*, directs others, and can accomplish the work with certainty. In this mode should the law be interpreted: consequently there is no definite work for the apprentice and the rest.

*In this case, hire, salvages, and so forth, must be understood, as in partnership among traders: and, if any thing be destroyed by the fault of one among four persons, it must be made good by him; the owner should not refuse to pay the wages of all the workmen. But, if any thing be taken, on a false pretence, in the presence of the teacher, who brought the good artist and the rest, the wages of all the workmen may be withheld; and the others shall receive their shares of pay from the teacher, or from the person in fault. This and other cases must be understood.*

#### LIV.

VRĪHASPATI: — WHERE several men jointly build a house or a temple, or dig a pool, or make utensils of leather, let the chief workman receive a double share of the pay.

"THE chief workman;" the principal workman.

*The Retnācara.*

SOME remark, that distinct shares, directed for four persons (the apprentice and the rest), should be understood of work other than the building of



of a house and the like; for VRĪHASPATI has not ordained such a distribution in the case of a house and so forth; but the principal workman, employed in the building of a house and the like, shall receive a double share, and the others equal shares of the pay. But that does not coincide with the *Retnacara*, where it is said, 'the text of CA'TYA'YANA (LIII) supposes one person giving, and another receiving, instructions; in other cases the chief workman shall receive a double share; and thus there is no inconsistency.' Therefore, should an experienced scholar and a good artist only join in the work, without one person giving, and another receiving, directions, the rule follows the text of VRĪHASPATI. The presence of persons giving and receiving directions does not suppose a teacher and pupil, but a workman of little skill, and another of great skill.

THE meaning consequently is this; first mentioning the manufacture of gold, silver, cloths and so forth, and afterwards the building of a house, the legislator answers in the last text (LIV) the question which arises on the former text (LII); "how shall pay be received according to the work in all cases, whether it be the manufacture of gold, or other work?" In all cases, whether it be the manufacture of gold or other work, the chief workman shall receive a double share of the pay: and the text of CA'TYA'YANA is irrelevant. It should not be argued, that the text of CA'TYA'YANA relates to cases other than the manufacture of gold and so forth; for the *last* text (LIV) provides for other cases. Nor should it be argued, that both the texts of VRĪHASPATI are reciprocally illustrative of a general sense, but do not comprehend other cases. Were it so, that would be derogatory to the sage, since a law must exist in regard to work not mentioned in either text. It is said, the first text (LII 1), interpreted in the same sense with the text of CA'TYA'YANA, may be a declaration of the law for the case where four artisans are jointly employed; and the last text (LIV), where two workmen are employed. It should not be objected, that a different mode of partition is incongruous, because leather is mentioned in both texts. There may be different modes of partition, the last text intending ornaments or utensils of leather, and the first, other manufactures of the same material: thus, when a covering of leather for a ear is ordered by the owner, if one workman be skilful, and others be also employed, the chief workman shall receive

receive a double share of the pay. To this proposed exposition the answer is, it does not seem reasonable to destroy the concordance between two texts of VRĪHASPATI'S own code, *merely* for the purpose of reconciling one of them with the text of another legislator. In fact, since there can hardly be persons receiving and giving instructions in the building of a house, or the digging of a pool, and the like, the rule of distribution between two workmen might be suggested; but, four persons being required for the manufacture of ornaments, the rule of distribution among four is proper: and this results from what is said in the *Retnācāra*: thus, in building a house, one man carries the bricks and other materials; but another, being an intelligent workman, constructs the edifice: so, in building a habitation of grass and wood, some person brings and throws up the grass, wood, or other materials, and another constructs the house. In digging a pond, one digs the spots which are marked to prevent inequalities, or notices what should be taken or left by all the workmen; the others dig after him. In making utensils of leather, one sews the leather; the others, as pupils, stretch it. Is there not employment for four persons in building a house, as well as in making ornaments? Thus, one carries the bricks; another removes their inequalities and fits them for the pillars or other uses; another again cements them in their proper places; a fourth, to raise a straight wall of masonry, causes the bricks to be placed properly; in a building of grass or wood, one man carries the wood; another cuts away rotten parts with an axe, and fits the wood; a third, by labour, joins two timbers; a fourth lines the wall. In all three instances, reference may be made to skill in work: and the same may be understood of other work, as the case may be. To this question the answer is, if it be so in regard to the wall, still there is no employment for four persons of different descriptions, in roofing the house, nor in constructing a house of bamboos, or building a house with unburnt bricks. In the text above cited (LIV) the term "house" intends such houses. But, where there is employment for four persons, the former text (LII 1) is applicable: and this is actually said by the author of the *Retnācāra*; 'the text of CA'TYĀ-YANA supposes one person giving, and another receiving, instructions:' and the same should be understood of other cases. If three persons join in work, then the distribution should be settled in this form; for the rule is admitted, because they are included by their employments in the descriptions of apprentice and so forth.

Thus

Thus some expound the law In some provinces it is the practice, in regard to the roofs of houses, to give the same pay to the man, who throws up the galls, and to him, who makes fast the string, but less than the pay of the thatcher and in building houses of masonry, greater wages are given by the owner to one employed as chief workman, than to the others who assist him but other labourers again carry the bricks and perform the rest of the labour This and other usages subsist. There can be no benefit from expatiating on the subject, for wages are paid according to settled usage, and workmen are employed on special agreements So much has been said to explain the law it should be received as above explained.

## LV.

VRĪHASPATI —THIS has been ordained by wise legislators for a band of musicians let him, who marks the time skilfully, take a share and half, and let the singers have equal shares.

“ HE, who marks the time skilfully” (*talaṃyā*), “ *tala*” is explained by AMERA, measuring time and performance, that again is explained in the commentary on his dictionary, the measure of the appointed time of utterance, one or two moments, and the discrimination of exact performance. Consequently, in the case of singing, the utterance of certain letters or syllables of the song after once, twice, or thrice uttering certain other letters or syllables, is measurement of time and called *tala* in fact it signifies measuring the time during which a word or sound must be held, and the time when another syllable should be uttered after the utterance of that sound, as in the verse of the *Gītāgovinda*, “ *Hṛīr ība mīd ba bad bu mīcare vīlasi vīlasi celipare*,\* a momentary pause is made at “ *hṛīr ība*,” and the sound of the last syllables of “ *bad bu*” and “ *mīcare*” is prolonged during the twinkling of an eye, or during half that time, or during a very minute space of time. this is called measuring time Measure of performance consists in regulating the effort of the singer with his tongue or other organ of speech to utter the letter or syllable the intimation of it by a contemporary stamp

\* *Hṛīr* exults in the assemblage of amorous damsels Asiatic Researches, vol 3 pa 187 Or as verbally translated by the same hand, *Hṛīr*, O my amorous friend, delights in the hug of pleasures, in this assemblage of beautiful damsels

of the foot on the ground, or by clapping the hands, is called (*tála*) beating time. Though all the common acts to be done by the dancer, the musician, and the rest, with the utterance of low sounds, be not indicated, nor even the performance of loud musick, yet the step or gesture, corresponding with a difficult passage, is marked; how is the performance of a dancer and the rest measured? By the word "performance" steps and so forth are signified: consequently the hint to perform a certain step or gesture at the same time with the utterance of a certain sound, with which sound it ought to be performed, is the measure of performance, and is called *tála*: measure is in this instance explained discrimination, and that consists in distinguishing the parts of the performance to be executed at a certain time, namely that a certain act must be done immediately after a certain time: this is mentioned as suggested by the single term of "fingers." But in fact, whatever act is to be done, or sound to be uttered, immediately after a certain time, and whatever stroke on the ground or the like with hand, foot, and so forth, is to be given during the performance of musick at a certain time according to the laws of musick and singing, the notice of that time, or hint for the performance, is meant by "measuring time and performance." Consequently beating time *and prompting* is applicable to singing, playing, dancing, and so forth.

Was it not superfluous to say, "Let the fingers have equal shares;" for that was already suggested by the allotment of a share and a half to him, who marks time skilfully, since the marking of time belongs to singing only? No; for the term "marking time skilfully" denotes one who is skilful in marking time. Consequently he, who teaches the rest to observe time skilfully, is denoted by the term. In this country such a man, in singing and the like, is the man who begins the song; for the rest sing as they are instructed by him, and the musician also plays the musick adapted to that song. In dancing and the like, a musician is sometimes *the leader of the band*; sometimes a dancer *leads it*. All this should be understood; for such a practice is remarked.

The term "this law" extends the law for artificers to a band of musicians. Consequently, if persons of two descriptions are employed, as fingers and musicians,

musicians, or the like, the rule of distribution among two persons is applicable; but if it be an employment of persons of four descriptions, the rule in regard to four persons is applicable: so, if there be employment for persons of three descriptions, the rule of distribution among three persons must be understood. "A share and a half;" half more than one share; let him, who marks the time skilfully, take one share together with half a share: so the *Vṛāda Chintāmeni* and *Retnācara*. If some of the musicians die, their shares of the pay, for so many days as they were employed, shall be delivered to their heirs, or to the king; and let the king receive them for safe custody: but let the associates of the deceased cause the work to be finished by some other person, whether the employment be that of singing or dancing.

## LVI.

VRĪHASPATI:—If, in time of war, any property should be brought from the hostile territory by robbers, or irregular soldiers, authorized by their lord, they shall give a sixth part of it to the king, and divide the rest among themselves in due shares.

2. LET their chief receive four shares; the most valiant of them, three; the most active, two; and the rest share and share alike.

THE *Vṛāda Chintāmeni* explains the "chief," he who exerts mind and body; "valiant," resolute; "active," possessing superiour strength. But CHANDÉSWAKA, so explaining the chief and most valiant, says the third description means active in comparison with the rest.

WHERE robbers make incursions, one of them commands as their leader; some, armed with bows, swords, or the like, are posted on the road to prevent the motions of the people; others plunder; and the rest carry the loads: such an arrangement is signified by the text. The commander is the chief; for, skilled in counsel, uniting the rest, knowing the means of subsistence, he is pre-eminent: and all the rest act by his orders. This is expressed in the gloss,

"he

“ he who exerts mind and body ” His associates, who recede not from battle, but despise death, are described by the term “ most valiant ” and these are posted on the road to prevent a surprise. Others, while the enemy is repelled by the most valiant, plunder foreign houses. these are deemed most active. Those, who carry loads, furnishing corporal labour only, are inferior to the rest, and they receive share and share alike. “ Active,” expounded in the *Vivada Chintamam*, possessing superiour strength, will intend the same, if it be explained as denoting a person endowed with the strength requisite for breaking open doors, to enter foreign houses

THE shares should be distributed according to the numbers of each description thus, if there be one chief, ten valiant, four active, and eleven inferior robbers, the plunder should be divided into fifty-three parts but if the active robbers be able to perform the office of the most valiant, they may each receive three shares by special agreement

#### LVII

CATYAYANA.—OF an enemy's property, brought from a foreign country by robbers commissioned by their lord, the king shall have a tenth part, and they shall divide the remainder by this rule:

2. The leader of the robbers shall have four shares of it; the bravest of his men, three, the most active, two, the others, equal shares.
3. If one of them, when they set out on their adventure, should be taken prisoner, whatever he may give for his ransom, the rest shall pay equally with him.

CHANDÉSWARA says, “ a tenth part, or sixth part, should be understood according to the nearness or distance of the foreign country.’ But MISRA holds, that the texts carry an implied sense. Thus, if the king protect the robbers, he shall receive a sixth part, being very distant, if he do not take measures to protect them, he shall have a tenth part only. Others hold,

hold, that a sixth part shall in general be received ; for taxes have been ordained at the same rate : but, if the expence and toil of the robbers be great, in consequence of their going to a very distant country, the king shall only receive a tenth part ; and this rate ordained by the text is in the nature of a favour : it must be understood, that the king ought not in this case to receive more than a tenth part.

“ IF one of them should be taken prisoner &c.” if one of the robbers going to and fro be taken prisoner, and pay ransom to the captor for his release, the remainder of the plunder, after deducting what is given for his ransom, should be divided in the mode abovementioned : but if the ransom be given after partition, it should be paid in equal shares by all the robbers ; as suggested by the text, “ the rest shall pay equally with him ;” and because what had been already given, could hardly have been received before his capture. Such is the opinion of MISRA, and likewise of CHANDÉSWARA ; but he expounds “ taken prisoner,” confined or stopped. In fact that should be admitted ; for, if he be taken prisoner, he must of course be confined near the royal residence ; and if he be stopped, being watched, it is possible he may afterwards be taken prisoner : it is therefore necessary, that he should, if possible, give money to satisfy the guards. That ransom is disbursed for *the benefit* of all the robbers. Virtually the same sense is deduced from both expositions. If one be taken prisoner, the rest may also be apprehended on his information : therefore his ransom is a benefit to the rest. This appears to be the meaning of the sage.

FROM the mention of partition, after giving a part of the plunder to the king, it follows, that the robbers have property in the wealth seized by them : and that property is by occupancy, as the king's right of property, acquired by conquest, in the wealth of a foreign realm. The king honestly acquires property in that wealth gained by occupancy, through his own exertions, by victory in a just war against another armed prince of equal power (Chap. IV, v. XX). But the property of robbers, acquired by occupancy, through their own exertions, in an unjust war, unauthorized by law, against men sleeping, unacquainted with the use of arms, and deficient in strength, or by intimidating *the owners*, belongs to the quality of darkness (Chap. IV, v. XXVII 3).

Is not wealth, stolen by a single robber from the mansion of a sleeping householder, the property of the robber? VACHESPATI BHATTĀCHA'RYA answers in the affirmative.

It is said, a person, taking property which lies before the owner sitting and awake, may make it his own. It cannot be objected, that the property, which is thus vested in the thief, is annulled by the occupancy of the owner. Even in the case of conquest, the conqueror's property would be annulled by the occupancy of the hostile prince. That is wrong; it must be affirmed, as is reasonable, that occupancy is not a mere acknowledgement of *ownership or acceptance of possession*, but the exercise of it: thus, wherever kings, acknowledging no human superiour, exercise authority approved by the law, even there property arises; the exercise of *dominion over effects* by men, (whether they be robbers or not,) who acknowledge a human superiour, namely a king, if it be authorized by him, takes full effect; he, who exercises such *dominion*, has property. If the exercise of *dominion* by powerful robbers be admitted, even without the king's authority, still the occupancy of a proprietor, supported by the double power of the king and of justice, prevents the occupancy of a weaker thief: and thus the property is in the owner, not in the thief. In the case of conquest and defeat of kings, whoever surpasses another in regal duties, in justice, and in armed forces, can prevent another's occupancy; and property is vested in him: thus the right is ascertained by discriminating the power of occupancy *or retaining possession*; and property so established must necessarily be admitted.

OTHERS deduce from the expression, "property brought by robbers authorized by their lord" (where the word lord intends the king), that robbers acquire a title to what is seized by them with the king's assent, as warriors gain property in the wealth of a foreign country. But robbers, unauthorized by the king, do not acquire a title to *effects stolen*. SU'LA'PA'NI does not admit the property of thieves in stolen goods; and the text quoted from NA'REDA supposes robbers authorized by the king.

THAT is questionable. Since it is necessary to establish occupancy as the obvious cause of property in waifs, and in the wealth of foreign *conquered*



kingdoms, the right of unauthorized robbers, suggested by the literal sense of the text, cannot be disproved without much trouble ; and there appears no occasion for such trouble : the reverse of the literal sense of NA'REDA's text would not be pertinent.

WHAT then is the meaning of the expression, " authorized by their lord ? " It intends punishment of *robbers* seizing the property of others, without authority from their lord ; for the *Mabâbbârata* and other works direct, that robbers should be expelled from the kingdom : but those, who rob with permission from their lord, are his subjects, acting in his service. Such a king is contemptible, because he receives property partaking of the quality of darkness, and because he injures others. But, if any king, not afraid of committing injustice, act in this manner, the sage has taken the trouble of regulating the partition : but this legislator has not authorized robbery. The expression, " brought from a foreign country," forbids the authorizing of robbery in his own dominions, lest the kingdom be destroyed. But, if any thieves rob in their own country, the same distribution of shares should be understood. And, should they rob without the king's assent, whether it become known to the king or not, their shares should be the same. This and other *rules* may be inferred from reasoning.

· If those robbers be taken prisoners, what is the mode of proceeding in that case ? The king should cause the property to be restored to the owner. What king ? he, who protects his subjects ; or he, who protects robbers ? The king, who protects his subjects, should cause the property to be restored to the owner. Shall the robbers, in that case, be punished, or not ? The answer is, how should the king punish them, since he is not their lord ? Who shall receive the sixth part which is payable to the sovereign ? The payment of it by the robber being necessary, he shall pay it to the king, before whom he is brought. Should the protector of the robbers enter into a contest with the prince, who protects his subjects ? Though it be not directed by the law, he ought, on the reason of the law, to contend with him : for how should he remain silent, having himself authorized the seizure of the property of others ? and, the robbers having acquired property partaking of a dark nature, in the stolen goods, if he do not contend with a foreign king, who seizes those goods,

goods, how does he protect his own subjects? Or if he do not protect them, how can he take revenue, for it would be inconsistent with the following text?

### LVIII

MENU — THAT king, who gives no protection, yet takes a sixth part of the grain as his revenue, wise men have considered as a prince, who draws to him the foulness of all his people.

If he cannot give protection, let him restore the sixth of the grain he has received, and the king, even though he *generally* protect his subjects, should not take his revenue from them, if he cannot recover their property from robbers.

SOME hold that the king, for the purpose of protecting the owners of property, should punish robbers whose place of abode is in a foreign territory, for no distinction is intended in the following text, between robbers coming from foreign countries, and thieves residing in his own dominions.

### LIX.

MENU :—IN restraining thieves and robbers, let the king use extreme diligence.

IT is consistent with common sense to punish robbers apprehended by guards, whether they be inhabitants of foreign countries or of the same province. It is no judicial practice nor induction of common sense, that, when robbers, taken in the fact, are brought before the king by his officers, he should inquire, and inflict punishment, if he discover them to be inhabitants of his own dominions, but release them, if they be inhabitants of another country. Were it so, there would be no punishment for robbers, who live in mountains and caves ruled by no king.

If robbers coming from foreign dominions be punished, when taken in the fact, their punishment cannot afterwards be opposed; nor can their protec-

tor interfere to prevent their chastisement. But the unjust king, apprehending the publicity of the protection, which he affords to robbers, though he may despise the consequences of his iniquity, may not *be willing to make his conduct publick*. It is said, he is not guilty of injustice in protecting the robbers. That may be true, but he should himself inflict punishment. He ought not to authorize robbery; nor ought he to permit pain to be inflicted on another, whom he has authorized to rob.

BUT in the case of robbery without *previous* authority, he truly authorizes it when he receives a sixth part of the plunder. But, if he receive not that sixth part, he should himself punish the robbers or restore the goods to the owner. If robberies be committed in his dominions with his permission, since it is necessary, that he should protect both *the owner and the thief*, he should cause the property to be restored to the true owner, and himself pay a fine; casting the amount of that fine into the water. But according to the opinion of those, who do not admit the amercement of kings, penance only shall be performed. If there be an universal monarch, possessing authority over all countries, and to whom all *other* princes are subordinate, may he impose fines on kings? This question should be examined under the title of robbery.

WE may affirm, that, for the purpose of obtaining victory over a foreign and stronger kingdom, a king, desirous of reducing the power of that kingdom, commissions robbers, that the subjects, distressed by their depredations, may desert that realm; and that the riches of that kingdom may be thus diminished, and victory be obtained over it. This text has been delivered by the sage, as a rule of partition among robbers in such cases. The robbers have property in goods so taken, as warriors have property in horses and elephants of war, in arms and the like: but property in wealth acquired by conquest in open war partakes of the quality of truth (LVIII); and the property of robbers partakes of the quality of darkness; for it is gained by exciting terror, or by the murder of unarmed, timorous and sleeping men, and is disapproved by the law. However, the law permits a king to reduce the power of a foreign kingdom, by means of robbers, with a view to conquest; but the recourse to robbery from a motive of avarice, to

increase his own treasure, is not justifiable: the law does not assent to the depredations of a king influenced by avarice; and the sage has not declared a rule of partition for such cases. But *obedience to the law itself*, not avarice, must be the motive for the conquest of a foreign realm.

## LX.

YA'JNYAWALCYA:—WHATEVER be the *rights and duties* of a king protecting his own realm, even all those devolve on him, who seizes a foreign kingdom.

To expatiate *on this subject* would be superfluous.

## LXI.

CA'TYA'YANA:—THE law *before* propounded relates to all partners, whether merchants, husbandmen, robbers *commissioned in war time*, or artificers, when they have made no special agreement for their shares.

WHEN they have not made a special agreement respecting their shares. CHANDE'SWARA so expounds the text. Some explain it, “when they make a partition without having *previously* settled, what shall be the share of each *partner*.”

OTHER partners, not already mentioned, are comprehended in this text, as *servants, boatmen, and others, working in partnership*. In *these cases also*, the chief is entitled to a double share. If the labour be of three, four, or more kinds, one additional share is allowed for each degree of superiour labour: however, it should be admitted from the reason of the law, that the shares shall be equal, if the labour be of different natures but equal.

If some king, or rich man, employ learned persons to compile a system of law, that the law may be *generally* understood, and justice be observed, or to compose a poem for his gratification, or a work of any other kind, and give wealth to them for their maintenance, or as a token of respect; then also, if he make not separate gifts to each, this same rule is applicable. Thus,  
if

if the labour be of two kinds, the gifts shall be distributed in single and double shares; if it be of three or more kinds, the distribution should be made accordingly, in the mode formerly mentioned. It should not be argued, that the shares may be regulated as in the performance of solemn rites; for in the present instance there are no *Brāhmā*, *Brābmanáchch'hanfi*, and so forth, to give occasion for such a regulation of the shares.

ANOTHER incidental observation may be made: if the work be jointly composed by a teacher and pupil, a master and servant, or the like, there is no such rule of distribution. If the teacher, or other principal person, have promised any thing, even that shall be given; otherwise, it is optional. The teacher and the master, not the pupil or servant, shall share what is given as a recompense by the king or other *employer*. So likewise, if any loss arise. But if the loss happen by the fault of the pupil or servant, the blame is imputable to that pupil or servant: if the book fail by his fault, it is his loss. If the teacher die or be disabled, what was receivable by him, may be taken by his heirs; and they should complete the work themselves, or by means of others. But should there be no special agreement concerning an employment for a long space of time, the work and the gain may be regulated at the pleasure of the king, or other *employer*. Also, should the pupil die, the rule is similar; but here the option, *allowed* to the teacher, or his heir, is included in the case noticed of the king's option. The same should be understood where many join in composing a work, according to their respective superiority. These and other rules may be inferred from reasoning, by a simple exertion of intellect.

So, in joint conquest, and in joint purchases, whatever share a partner has in the principal stock, such shall be his share of what is acquired: and the exertions for the preservation of the stock, and so forth, should be proportioned to the shares in the principal stock. Similar decisions should be given in the case of barter in partnership, and also in other cases.

## CHAPTER

## CHAPTER IV.

## ON SUBTRACTION OF WHAT HAS BEEN GIVEN.

## SECTION I.

## ON UNALIENABLE PROPERTY.

## I.

**VRIHASPATI:**—THIS law, respecting concerns among partners, has been fully declared: *the law, concerning what may, or may not, be given, and what is, or is not, a valid gift, shall be next propounded.*

..

CONCERNS among partners have been unfolded; undue gifts and the rest are next “unfolded.” The construction of the sentence resumes this term from the context, because the sense requires it.

## II.

**NA'REDA:**—WHEN a man desires to recover a thing, which was not duly given, it is called subtraction of what has been given, *and this is a title of administrative justice.*

2. IN civil affairs, the law of gift is four fold; what may, or may not, be given, and what is, or is not, a valid gift,
3. Things, which may not be given, are eight; what may be given, is declared to be of one sort *only*: know valid gifts to be of seven sorts; void gifts assume sixteen forms.

THE man, who, not having duly given a chattel, wishes to retract the donation, is called a recanter of gift, and *this* is a title of law : he contends for withdrawing what has been given. Thus simple men interpret the word from its etymology : it intends a man, who pleads, that he has not duly given what the other party affirms to have been duly given. Others read, " what a man &c. (*yat* instead of *yab*). " Some take the word " it " indeclinably ; for the dictionary of AMERA explains the correlatives, " what, that ; why, therefore : " because he desires *to withdraw the gift*, therefore the title of law is subtraction of what has been given. It follows, that the title of law refers to the wish *of retracting the gift*, or to the gift retracted.

THE term used by MENU (Chapter I, v. II 1) denotes payment or delivery ; non-delivery of what has been given is retraction of it. Delivery here intends a perfect gift : its converse is an imperfect gift, and is a title of law, namely subtraction of what has been given. Given denotes the intention of the giver expressed in this form, " let this be thine : " the word, interpreted subtraction, may signify imperfect or undue donation ; where that exists, there is imperfection of gift. In the text of NA'REDA, " on what ground," and " that being ascertained in his gift," may be supplied : " on what ground a man desires to retract a donation, that being ascertained in his gift &c. " for it has the same import with the text of MENU : the imperfection of the gift cancels it ; accordingly the text expresses " not duly given. " There is no difficulty in including under this title a man who desired to retract a gift which is afterwards determined to have been duly given, since a suit at law exists previous to that decision : but on the construction proposed by simple men, " not duly " would be unmeaning. Thus some interpret the text. But CULLU'CABHATTA explains the term employed in the text, " withdrawing or taking back. " According to his interpretation, " recovery desired " must be supplied in the text of NA'REDA : " when a man desires to recover what has been given, the recovery desired by him is retraction of what has been given, and this is a title of administrative justice. "

THE gift may be imperfect because the thing is unalienable, or because it is given by a person not entitled to give it. Thus the gift may be imperfect, because the chattel is unalienable, or because it is improperly given, or because

cause it is given to a wrong person, or without the assent of the father and so forth, or at a time when the door is defiled. So MISRA. This will be explained in another place, it is here mentioned incidentally.

“ IN civil affairs &c.” (II 2): the rule to be established, that gifts, made by a man afflicted with disease and the like, are void, regards civil gifts, not donations for a religious purpose. This title of law does not extend to a gift made for a religious purpose: the donation is valid, if it be made by the owner *of the thing*.

### III.

CĀTYĀYANA:—WHAT a man has promised, in health or in sickness, for a religious purpose, must be given; and, if he die without giving it, his son shall doubtless be compelled to deliver it.

RAGHUNANDANA and other authors expound this text, “ what a man, even afflicted by sickness, has promised to give, must, if he die, be given by his son.” It is not proper to say, that what he has promised, must necessarily be delivered, but the gift is not valid. The rule must be understood of other cases as well as of sickness; for the reason of the law is equally applicable.

“ THE law of gift is four fold;” literally the path of donation (II 2). The ways of arriving at, or receding from, the annulling of property, and thereby effecting donation, are four. Thus, by the way of void gifts, the act recedes therefrom; by the way of valid gifts, it arrives thereat: the rest will be evident in course. The wish of retracting an invalid gift takes effect; the wish of withdrawing a valid gift is fruitless. This is the whole rule concerning subtraction of what has been given; for an invalid gift only may be withdrawn.

WHEREVER the gift is invalid, *the property* is actually recovered: how then does the man “ wish” to recover it? Where effects are possessed by another under the semblance of a gift, a doubt arising whether they shall,



or shall not, be recovered, the sage directs, that they shall be recovered if it be ascertained to be *merely* the semblance of a gift; but shall not be recovered, if that be not ascertained. An invalid gift *is mentioned* to determine, that the supposed donation is void.

SHOULD not gifts be here said to be of two sorts, valid and invalid? why are they denominated from what may, or may not, be given; *for* there is no proper distinction, in treating of this subject, between what may and may not be given, and what is and is not a valid gift? Simple men reply, both are noticed incidentally. Both are mentioned to denote, that the gift of a son or a wife is imperfect, because they should not be given. For what purpose is it said, that the gift of what may not be given is imperfect? The answer is, it appears, that a fine is incurred by such a gift. Those things, in the giving of which there is sin, should not be given: and that sin is not expiable by penance alone; for, were it so, such gifts should be discussed under the title of penance *and expiation*: being noticed under the head of judicial procedure, it appears, that the giver of what should not be given, shall be amerced. Thus some *expound the law*: their opinion will hereafter be considered.

VRĪHASPATI has not mentioned the term "subtraction of what has been given;" but mentions the four fold *distinction* of what may, or may not be, given, and what is, and is not, a valid gift: the rule must be deduced from the acceptance of the terms, ' what may not be given &c.'

THE eight things, which may not be given, are thus enumerated.

#### IV.

NA'ĀREDA:—WHAT is bailed for delivery, what is lent for use, a pledge, joint-property, a deposit, a son, a wife, and the whole estate of a man who has issue living,

2. The sages have declared unalienable even by a man oppressed with grievous calamities; and *of course* what has been promised to another.

WHAT is bailed for the use of another (*anudhita*) is a distinct kind of bailment, explained in the chapter on deposits. It is mentioned to show, that it is comprehended under the general term of deposit, by the same rule, by which one name of kind may denote cattle of that sort, and a synonymous term in the same sentence may intend cows only : consequently, there is nothing inconsistent with the number of eight *unalienable things*.

MAY it not be said, that pledge and loans for use should not be repeated ; for they are nearly allied to deposit ? Some distinction may be admitted ; because a pledge is connected with debt ; and a loan for use gives dominion over the chattel to one, who is not the owner : but bailment for delivery is a mere repetition, for the owner's dominion *over the chattel subsists in full force* ; a thing deposited through the intervention of another, a chattel bailed by an absent man, and the like, are deposits generally, for they are only distinguished by minute differences.

MISRA reconciles the number by joining the words son and wife into one compound term ; “ a wife with a son, mentioned conjointly : ” consequently, there is nothing inconsistent with the eight fold distinction premised. But the text shows, that a wife and a son may not be given, as the expression, “ the father goes with his son,” denotes, that both go.

## V.

VRĪHASPATI : — THE prohibition of giving away is declared to be eight fold : a man shall not give joint-property, nor his son, nor his wife, *without their assent in extreme necessity*, nor a pledge, nor all his wealth *if he have issue living*, nor a deposit, nor a thing borrowed for use, nor what he has promised to another.

IN this text bailments for delivery and the like should be understood as comprehended under the term deposit.

Is it not superfluous to declare, that deposits and the like may not be given ; for, in their nature, they are unalienable, because they are the pro-

perty of another : else it should also be said, that the property of another, actually enjoyed by the owner, may not be given by a stranger ? Consider it as mentioned for the sake of an amercement imposed on him, who gives away deposits and the like. Is there no punishment for him, who gives away the property of a stranger under other circumstances, that deposits and the like should be *specially* declared unalienable ? Since, under other circumstances, the property of a stranger cannot be given away without theft, the giver shall be punished as a thief : but, considering that deposits and the like, being actually in the depositary's power, might be given away *without suspicion of theft*, the beneficent sage has declared them unalienable.

OTHERS remark, that VIJNYA'NEŚWARA admits the creditor's property in a pledge ; and the property of the borrower, in a thing borrowed for use and the like, may also be admitted : but the right of the owner is not annulled ; *it subsists* like the concurrent property of husband and wife : therefore the borrower, but not a stranger, may, with the assent of the owner, alienate at pleasure a chattel borrowed for use. Thus, on the grounds of such a subordinate property, a gift or other alienation might be made ; but the sage prohibits the gift (IV 1), because that property is subordinate.

A GIFT of deposits and the like, made by mistake, is not valid (Chapter II, v. XXVII). Therefore deposits and the like, given away by mistake, may be recovered. With a view to this, MĪSRA has said, " the gift may be imperfect, because the chattel may have been unalienable." Others affirm, that creditors and the rest may create, by gift or the like, an interest equal and similar to their own.

" JOINT property" (IV 1) is explained in the *Retnācara* and *Chintāmeni*, what belongs to more than one owner. Therefore the sense is, that one brother shall not, without the assent of the rest, give away undivided wealth held as the property of several brothers.

SHALL he not give away the whole of the joint-property ? or shall he not

not give away the amount of his own share ? On the opinion of JI'MU'TA-VAHANA delivered in his gloss on the text of VYA'SA (Chapter II, v. VI); " because the family would be injured by a sale, gift, or other *alienation*, effected by a distressed coheir as part-owner of *joint-property*," some remark, that, if it were intended to forbid the sale or gift of the whole, the author would have said, " they would be deprived of the means of subsistence if a gift or sale were made;" thereby forbidding *the alienation of the whole*. There is no difference, whether the sale or gift of the whole wealth be made by a parcener distressed or not distressed; consequently, it would be vain to contend for a partition or the like, with a distressed man, who had sold the amount of his own share of *the joint-property*: to obviate this consequence, even a parcener's sale or gift of his own share without the assent of the coheirs is forbidden. Such is the principle of *the rule*: and here, from this prohibition of the sale or gift of his own share without the assent of the coheirs, it appears, that the parcener shall be punished if he do so; for the texts of NA'REDA and others, under the head of judicial procedure, show, that joint-property may not be given away. At present parceners do not make gifts or sales of undivided land or other property, without the assent of the coheirs; each says, " how should I sell it? this property is not divided." Such is the general custom in some countries. But certain lawyers hold, that, if a parcener give or sell his own share, the king does not impose fines on trifling occasions; or the parceners, from indolence, or considering it as fruitless, do not inform the king: in this view of *the matter*, custom permits parceners to give or sell the amount of their own shares. If the maintenance of his family cannot be *provided by a parcener* without the sale of that property, and his wealthy coheir neither make a partition, nor consent to the sale, what shall be done in that case? The king, they say, on the application of the person who wishes to sell *his share*, should give attention to the matter. But here it must be understood, that joint-property is unalienable without the assent of the coheirs: however, should the gift or sale be actually made, it is valid; for the following text may relate to the amount of the respective portions of *joint-property*, as well as to divided shares; and the will of the owner being a sufficient cause of vesting property in another, the parcener may not be able to bear the delay of partition, or of obtaining the assent of his coheir.

## VI.

NA'REDA:—If they severally give or sell their own *undivided* shares, they may do what they please with their property of all sorts; for, surely, they have dominion over their own.

It should not be objected, that the assent of coheirs should be established, under the authority of the text, as a necessary association for the disposal of another's right in undivided immoveable property: thus, without the union of all the *requisite* causes, the effect of conferring property on another does not take place. Since the text may be pertinent in the sense abovementioned, it is wrong to impose the difficulty of establishing such an association. Herein SRÍ'CRÍSHNA TERCA'LANCÁ'RA concurs. But if a parcener, without the assent of his coheirs, give the whole joint-property, the gift is null; for the joint-property of all cannot be devested by the act of one.

It is questioned whether his own property be, or be not, annulled by the act of a single parcener. It should not be said, that his own property is not annulled, because the gift, being improperly made, is in its own nature imperfect; and is void as the act of a man partly destitute of ownership. There is nothing to prevent the annulling of *his own* property, since the gift, which he himself makes with the intention of annulling the rights of all the parceners in that chattel, is the act of an owner, of whom property is predicable. Consequently the ownership of the giver appears in this instance to be alienable: but the ownership of the rest subsists *in full force*. The meaning of ancient authors, who hold a gift of joint-property to be void, is the same. But a parcener's gift of his own share is valid. All the brothers have each their respective predicable property in all the effects.

It should not be objected, that, when the father dies, if one common property in the same thing be vested in several brothers; and, should one of these die, if the right of all the parceners be annulled and another property be vested in the *surviving* brothers together with the son of the *deceased* brother; it is troublesome repeatedly to establish joint-property vesting in many persons: therefore the property in the effects vests in the persons severally.

After

After the death of a brother, it being necessary to establish a single property vesting in his son after the annulling of his single property, we find, *say these lawyers*, no greater difficulty in establishing a property not dissimilar predicated of many persons. It must be therefore established, that the ownership of all is, or is not, annulled by the act of one; nor, that the giver's right is annulled, and that the property of the rest subsists. These lawyers therefore think, that the gift of one may be valid as the gift of all.

To that argument there is this objection: it suits the opinion, in which property is referred to things; but it does not accord with the sentiments of the *Naiyáyicar*, who dissent from that opinion, and refer property to persons: thus it is difficult to establish, that the ownership of all the brothers is annulled upon the death of one; and no quality, except conjunction and the like, is acknowledged to be inherent in two individuals *at the same time*. Or admitting single property, still there is no difficulty. Thus, after the right of all the brothers has been annulled on the death of one, a single property arises predicated of the surviving brothers and the heir of the deceased; not a distinct property predicated of the heir alone. In the present case also, after the right of all the parceners has been annulled by gift, property arises predicated of the other parceners and the donee; for gift only creates a property similar to that held by the owner, *who makes the gift*.

Is it sale *or gift* without ownership? What objection is there to its being considered as a true sale *or gift* without ownership? for it might be supposed, that he shall be punished as a thief for such a gift or sale; yet that *punishment* is not insisted in this instance, because the law has forbidden it (Book V, v. CCCLXXVII 4): in the case of possible theft only, that punishment is consistent with common sense. But some hold, that it is not sale without ownership, because the parceiver is not a person different from the owner of the chattel.

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THEN what shall be the punishment? The penalty directed for the gift of what is unalienable. That penalty will be quoted from JÍMU'TA VÁ'HANA and others, as expressly declared by MĒNU. This should be well examined.

It must be noticed, that, if a parcener, without the assent of his coheirs, give or sell, to any person, some one chattel out of the whole undivided property ; at a subsequent time, when partition is undertaken, that chattel should be included in his share.

SHALL all the parceners divide the value of the effects *aliened* ; or shall the other parceners receive back their portions of those effects, and the *donee* or buyer recover the price of their shares from the *donor* or seller ? If the other parceners consent, that the effects aliened should become a part of his share in the joint-stock, then it may be included in his allotment : but, if they do not consent to that adjustment, nor to receive their shares of the value, they may recover their shares of the effects. Otherwise they may *severally* insist “ this chattel must be received by me, it shall not be given to that brother ; distribution shall be made by lot.” But, in fact, there can be no distribution by lot in this instance ; for the seller, whom that distribution would concern, is no longer an owner. It cannot be said, those effects are of course included in the seller’s share. All the brothers having ownership in those effects, that ownership is not annulled.

SHOULD it not be said, that, according to the opinion of JĪMU’TA-VA’HANA, who contends for dispersed property *vesting severally in the coparceners*, sale, as well as distribution by lot, determines the property *in particular chattels* : otherwise, a parcener, selling any chattel and consuming the *produce of the sale*, would be guilty of embezzling the property of another ? It cannot be affirmed, that there is no difficulty, because CA’TYA’YANA directs, that his offence shall be *patiently borne* (Book V, v. CCCLXXVII 4). Still, in the apprehension of sin, the penance directed for cases of doubt would be requisite ; and he, who consumes much, would undoubtedly be a sinner. A dissimilar property is not created, but a right proportionate to the share *of the donor or vender* : and if it be affirmed, that he, who sells for his subsistence that which he occupies, is proved to have had property therein, it follows, that a single ownership exists in effects sold for subsistence, and the other parceners would not be entitled to a share of the effects so aliened. This question is thus answered ; it is a maxim, that penances are similar to punishment : exemption from penance is therefore implied in exemption

exemption from punishment. The laws, which ordain partition by lot and otherwise, ascertain property ; but occupancy and the like does not ascertain it. If the property be doubtful, all the parceners are not entitled to shares ; but in this instance, if a sale be made for *necessary* consumption ; the feller shall not be punished : otherwise, he may be chastized. It should not be objected, that the parceners could not receive equal shares ; because the property cannot be determined by the decision of arbitrators, without the mutual assent of the contending parties *to the appointment of them* ; and distribution by lot has been already set aside. In this case, no distribution by lot does take place ; but the other parceners do not abandon their shares. The arbitrators, to whom their complaint of the parcener's illegal act is referred, rejecting the vender's plea, adjudge equal shares to all the parceners : and the notion of a property, which requires specifick mutual assent *to authorize alienation*, supposes a *common* right vesting in all the parceners, like their property in a single slave or the like. For this purpose the gift or alienation of undivided effects, without the assent of coheirs, is prohibited : a parcener is forbidden to give his own share generally, without specifying particular chattels, in this form ; " I give you my share ;" for then the donee may be admitted, like a parcener, to a distribution by lot : but, even in that case, the assent of coheirs is required for the alienation of immoveable property (XIX 5).

JOINT-PROPERTY is wealth belonging to more than one owner. MISRA says, ' the gift is invalid, because a man has not full dominion over joint-property, a wife, or a son : and the want of dominion, in the other instance, is deduced from the *same* reasoning, which proves it in the case of joint-property.' By " the same reasoning " he means, that the ownership of one cannot be annulled by another. From MISRA's exposition it is inferred, that a parcener's gift of his own share of undivided property is void. But, to reconcile the two opinions of *different* authors, we adopt the sense inferible by reasoning, and say ; a gift of the whole joint-property is void, not a gift of the parcener's own share. Thus the donor cannot, at his own choice, annul the ownership of others ; but he is not debarred from aliening his own single right in the joint property : for such acts by partners in trade are often seen in *common* prac-



tice. This may be stated as the opinion of VA'CHESPATI BHATTA'CHA'RYA, and VIJNYA'NE'SWARA. Therefore, the gift is valid as far as the donor's share is concerned ; but he shall be punished, and must perform penance. Such is the rule ordained concerning gift, or other *alienation*, of what may not be given. ' That a thing may not be given ' denotes, that the gift is attended with sin : for this form of speech bears the sense of the imperative. It does not denote, that the gift is a void act : were it so, it would not differ from a void donation ; and full dominion would not be noticed under this title of ' what may not be given.' If it be said, this title is intended to show punishment *for such gifts* ; it is answered, this form of prohibition implying offence, the offender should be punished. Thus the gift of things, which are enumerated among those which may not be given, is punishable ; gifts, enumerated among those which are void, are utterly null ; and those noticed under both heads are both *void and punishable* : as the gift of a deposit or the like, of another's share in undivided property, and so forth.

In regard to a son or a wife, MISRA says, that the gift is void, for want of full dominion. It appears, under the authority of the text, that there is no full dominion over a son and a wife, who do not consent to the sale. Here this objection *occurs* : if a father, or husband, have power to give away a son, or wife, it should appear that they have the dominion of owners over them ; and having ownership, how can their gift be void, being made by persons neither insane, nor otherwise incapable ? and these are not enumerated among void gifts. Consequently the donation, even without their assent, is valid ; but the donor shall be punished, for they are found in the number of unalienable things *and persons*. In the text of CA'TYA'YANA (VII) the gift or sale of a son or wife, without the assent of the parties interested, and without extreme necessity, is forbidden : it is not said, that the gift, or sale, is void.

## VII.

CA'TYA'YANA :—A WIFE or a son, or the whole of a man's estate, shall not be given away or sold without the assent of the persons interested ; he must keep them himself,

2. But in extreme necessity, he may give or sell them *with their assent*; otherwise, he must attempt no such thing: this has been settled in codes of law.

“ WITHOUT *the assent of the persons interested,*” (that is, of the son, wife, kinsmen and so forth,) these must not be sold nor given away.\* If he neither give nor sell them, where shall he place them? The sage replies, “ he must keep them himself.” MISRA observes, that, if *the persons interested* do not assent *to the gift or sale*, these three (*the son, wife, and the whole of a man's estate*) must be retained by himself. Even with their assent, they can neither be sold nor given away, unless in extreme distress (VII 2). It is wrong to affirm, that, after forbidding the gift or sale of a son and the rest without *the assent of the persons interested*, the admission of such a gift or sale in extreme distress shows, that *the gift or sale* may be made in such circumstances even without *the assent of the persons interested*. NA'REDA, forbidding *such a gift or sale*, even in extreme distress (IV), would contradict CA'TYA'YANA. Therefore, in the utmost distress, a son and the rest may be given away, with *the assent of the persons interested*; but even in such circumstances, the gift may not be made without their assent. Such is the demonstrated rule.

A son is also given for the purpose of adoption; *this being done as an act of duty* to relieve the adopter's distress arising from the want of male issue, no penalty is incurred: the assent *required* is *found* in the want of opposition; for it is a rule, that not to forbid is to assent. Therefore the gift of a son under the age of five years may be valid; and it appears, that a donation may have force even without *the assent of the persons interested*. Since the gift of an unsuitable son, even though he do not assent, is valid, therefore the father may have full power to give away *his son*; and, from parity of reasoning, the same may be understood in regard to the gift of a wife. It should not be objected, that, under the authority of the text, the gift of a son or wife is valid, without their assent, if they do not oppose the donation; but in the gift of an infant there can be no opposition *made by him*. It is troublesome to prove want of opposition *an associated cause* for the validity of *an act* develling property, which is an effect of acts, to which the assent of the

\* I omit a grammatical disquisition justifying the use of the masculine gender in the instance of a participle governed by unconnected words of the three genders.

proceeds from his father and mother, as an effect from its cause : both parents have power *for just reasons* to give, to sell, or to desert him ; but let no man give or accept an only son, since he must remain to raise up a progeny for *the obsequies* of ancestors. Nor let a woman give, or accept a son, unless with the assent of her lord.\*

“ NOR let a woman give or accept a son : ” give, having a secondary sense without losing its literal meaning, comprehends sale and the like.

CHANDÉSWARA.

CONSEQUENTLY, by parity of reasoning, “ may not be given,” in the text of NA’REDA, denotes also that they may not be sold: and by *the same* parity of reasoning, the term cannot be taken in the secondary sense of sale only, when thus employed in a single text.

“ BOTH parents have power &c.” Have the father and mother power jointly *to give, to sell, or to desert a son* ; or *have they that power severally* ? Not the first : a gift made by the husband alone, after the death of his wife, would be void ; but this is not intended, for, by declaring that a wife has not power to give *a son*, it is implied that the husband has that power. If the *second construction* be deemed admissible, still the husband’s *previous assent* is required for a gift made by a widow.

A GIFT made by the husband, while the wife is living, without her assent, to a person requesting it for the adoption of a son given, would be valid. This cannot be admitted. Were it so, that given son would not be forsaken by his mother: though a woman be dependent, the alienation of female property, or of *a mother’s* rights over her son, by the gift of the husband *alone*, is not valid in law or reason. It is said, the word “ or,” which occurs in many texts concerning sons given, shows the right both of the father and mother, severally to give a son: but there is this difference ; “ if the father be living, with his assent; if he be not living, without it.” And from this exposition of CHANDÉSWARA, it is established, that *parents* have that

\* See the remainder of the text in Book V, (v. CCLXXIII).

right severally: but the filiation to another person must be admitted without desertion of the mother. This will be more fully discussed in book *the fifth* on inheritance, under the title of sons given.

MISRA affirms, that "a woman cannot accept a son even with the assent of her lord, because she is precluded from the oblation to fire with holy words from the *Vêda*, which is a part of *the rites* on the acceptance of a son, as will be mentioned under the title of sons given." From this opinion VA'CHESPATI BHATTA'CHĀRYA and others dissent; for it is not said by any author, that the principal object cannot be attained, if a *secondary* part of *the rites* be prevented: women and *Sûdras*, though precluded from sacrifice, are observed to be qualified for dismissing a bull on *solemn* occasions. If adoption be null without an oblation to fire with holy words from the *Vêda*, still nothing prevents the validity of the acceptance: and by that acceptance, according to MISRA's opinion, *the child* would fall under the description of a slave.

WHAT some remark, that the wife has no right to give a son after the death of her lord without his previous assent, may be questioned; for, without an *express* ordinance, a woman's right, inferible from the reason of the law, to annul her own property after the death of her husband, without authority from him, cannot be barred. It may be examined, under the title of inheritance, whether the child be a son given *by his parent*, or a son *self-given*. Some explain it to be MISRA's intention, referring the text of VA'SISHT'NA to the son's assent, and, in his gloss on that text, discussing the acceptance of a son given *for adoption*, to require the son's assent to the gift, even in the case of a son so adopted. This should be examined: the filiation of a son given under the age of five years is legally valid; his then utterance of consent would be taught like *the speech* of a parrot or the like; there is no authority for admitting, in judicial procedure, words spoken by an infant under the age fit for business: therefore, in ordaining that "both parents have power to give, to sell, or to desert a son," his assent is required for the gift or sale, if he be acquainted with affairs, *or adult in law*; and the acceptance of a son given *for adoption* is discussed incidentally, because the text may relate to that *subject*.

## IX.

DACSHA:—JOINT-PROPERTY, deposits for use, bailments in the form called *nyāsa*, pledges, a wife, her property, deposits for delivery, bailments *in general*, and the whole of a man's estate if he have issue alive,

2. Are things, which the learned have declared unalienable even in times of distress: the man, who gives them away, is a fool; and must expiate *the sin* by penance.

HERE nine things are declared unalienable; but a son is not mentioned: including a son, ten things *and persons* may not be given. VRĪHASPATI (V) declares the prohibition of giving away to be eight fold: though deposits may be considered as comprehended in his text under the term "*nyāsa*," still female property is not included in that text; and what is promised, not included by NA'REDA *in the number of eight unalienable things*, is included in that number by VRĪHASPATI. On this mutual contradiction CHANDÉSWARA remarks: "it is not implied, that the enumeration of unalienable things, as delivered by other sages, is curtailed by what each himself declares." Consequently, where nine things are *declared* unalienable, it is true of eight; and if ten, or eleven things be so, the same is affirmed of nine, or eight.

THE female property of wives, like the property of a stranger, may not be given; for there is a want of ownership.

## X.

CATYA'YANA:—NEITHER the husband, nor the son, nor the father, nor the brothers, have power to use or to alienate the legal property of women,

2. If any one of them shall consume the property of a woman against her consent, he shall be compelled to pay interest *to her*, and shall also pay a fine *to the king*. \*

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\* Cited in Book I, v. LXXIII, and again in Book V, Chap. IX.

“ CONSUME ” is here employed in the comprehensive sense of *sell, or aliene &c.*

“ IF there be issue alive ” (IX 1): if there be a son, grandson, or great grandson, who have equal dominion *over the property*, it is ordained by NA’REDA and many other sages, that the whole of a man’s estate may not be given away: and if any person, though he have issue living, do give away his whole estate, he shall be fined. This is evident; and penance is also expressly directed by DACSHA. On the doubt whether the gift be valid, notwithstanding the amercement and penance imposed, MISRA says, “ the gift of a pledge, a deposit and a bailment for use, is prevented by the want of property; and *the gift* of a son, a wife, a man’s whole estate, and what has been promised to another, is barred by the authority of the text:” according to his opinion, the gift is not valid.

It should not be objected, that by saying, “ gift is prevented,” it is not meant, that such a gift is utterly null, but that it should not be made. The gift is invalid because the donor has not independent power over joint-property, a son, or a wife. The want of independent power to *dispose* of joint-property is founded on reasoning; *the want of power to give away* a son, or a wife, against their consent, is founded on the authority of the text: and MISRA subsequently says, that “ *the gift* of a man’s whole estate if he have issue living, and any person’s gift of what he has promised to another, are invalid under the authority of the text:” for it is proper to refer his words to the invalidity of the gift, since the form of expression implies a reference to what has preceded. Consequently, it is an established rule, according to MISRA, that a gift of his whole estate by a man, who has issue living, is invalid without the assent of the persons interested. But this supposes gifts for civil, not for religious, uses; since it is recorded in *Purānas* and other works, that HIRIŚCHANDRA and others gave their whole property for religious purposes; and NA’REDA limits the present title to civil affairs (II 2).

If a man, reserving a single shell, give away all *the remainder* of his property, is the gift valid? It is said, even in this case, the gift is not valid; for the prohibition of giving away the whole estate is founded on the consequent distress

distress of the family from want of subsistence. Therefore, after setting apart a sufficiency for the subsistence of the family, a gift of the remainder is valid; but a gift of the whole estate, reserving only a shell or the like, is not valid, as will be mentioned in explaining a text of VRĪHASPATI (XVIII 1): and JĪMUTA-VA'HANA says, "a gift or other *alienation* of the whole estate is forbidden on account of the subsistence of the family; for the family must necessarily be maintained."

WHAT is a sufficiency for the maintenance of the family? Not so much as is consumed in one day by the actual members of it; for that would be inconsistent with approved usage; and duty would be violated, since the family might next day be deprived of subsistence.

## XI.

MENU:—THE ample support of those, who are entitled to maintenance, is rewarded with *bliss* in heaven; but hell is the portion of that man, whose *family* is afflicted with pain by his neglect: therefore let him maintain his family with the utmost care.

THIS text forbidding the family to be left to pain and distress, the prohibition would be ill observed by maintaining them for one day only; the prohibition is observed by maintaining them for life.

THEN, any how estimating the duration of life, and setting apart a sufficiency for their maintenance during that period, a man may give away the remainder of his immoveable property and the like. This is not consistent with common sense; and NA'REDA declares it necessary to preserve wealth.

## XII.

NA'REDA:—EVEN they, who are born, or yet unborn, and they who exist in the womb, require funds for subsistence; the deprivation of the means of subsistence is reprehended.

"FUNDS for subsistence;" means of living. This is supposed by JĪMUTA-VA'HANA

VA'NANA to be *means of* wealth inherited from ancestors ; and immoveables constitute the best civil property : therefore the term is used in its acceptation of wealth generally. Reserving a sufficiency for consumption until other moveable property be obtained, a man may give away his moveable effects. This is the whole meaning.

SOME hold it established on the reason of law, that, setting apart a sufficiency to maintain, for a long period, the present members of his family, and their families, as determined by five prudent persons, a man may give away his immoveable property and the excess of his moveable property above what is required for subsistence until other moveable property be obtained, as also determined by five prudent persons. This should be well examined ; for neither opinion is expressly delivered by any author : but the last opinion may be deemed consistent with settled usage.

JISŪTA-VA'ITANA does not admit the invalidity of a gift under these circumstances.



that, which, in *the instance of other effects*, denotes a right of disposing of them at pleasure :” and the fact cannot be altered even by a hundred texts : therefore, the validity of a gift of land, whether inherited from ancestors, or acquired by *the donor* himself, being admitted because the incumbent has ownership, the same would be established in regard even to the whole of a man’s estate ; for the ownership is not different.

It should not be objected, that, if the validity of the gift, *as deduced* from ownership alone, cannot be barred even by a hundred texts, then gifts, which NARENA declares void (LIII), would be valid : but if the nullity of this gift be established from the sense of the words “ not given,” the invalidity of that gift may be established from the sense of the words “ what may not be given ;” and the expression, used in the text of YĀJNYAWALCYA, signifying disqualification, the invalidity of the gift may be established, as it is a gift by a person not entitled *to alienate such property* : in regard to what has descended from an ancestor, VRĪHASPATI will be quoted for the validity of the gift, if made with the assent of the coheirs (XVIII 4). It is ordained by YĀJNYAWALCYA and NARENA (LVIII and LIV), that, in certain cases, the act is invalid or null; and it is proper to establish the invalidity of such gifts : but the term, “ what may not be given,” shows a moral offence; else, “ what may and may not be given” would not be separately propounded. The text of VRĪHASPATI signifies, that the gift has validity, because being made by one not suspected of being influenced by lust or the like, it is excluded from the number of void gifts; and because there is no objection to its validity, since it is not the act of a person of unsound mind.

BE it any how in regard to the whole of a man’s estate acquired by himself; but the gift of what has descended from an ancestor, by a man who has a son *living*, is void, because he has not independent power *over that property*; for NARENA declares null a gift made by one, who is not an independent owner; and the law, quoted by VĀCHESPATI BHATTĀCHARYA and RAGHUNANDANA, declares a father not to be independent.

## XV.

*Smṛiti* :—WHILE the eldest brother lives, the rest are not  
K k k independent

independent; *but* seniority is founded both on virtue and on age:

2. All subjects are dependent, the king *alone* is free: a pupil is declared dependent; freedom belongs to his teacher:
3. All wives, sons, slaves, and unmarried girls are dependent: and a householder is not uncontrolled in regard to what has descended from an ancestor.
4. An infant (*śiśu*), before his eighth year, must be considered as similar to a child in the womb; but a youth or adolescent (*pôgenda*) is called a minor until he has entered his sixteenth year:
5. Afterwards, *he is considered* as acquainted with affairs, *or adult in law*, and becomes independent on the death of both parents; *but* however old, he is not deemed independent while they live.\*

THE inference is wrong, for these texts do not propound a dependence invalidating civil acts. The sense of the text is thus: while the eldest brother lives, (eldest in age, if all be equally virtuous, or younger in age but endued with qualities fitted for the support of the family,) the rest of the brethren should not give, sell, or alienate at pleasure, *any part of the estate*, without his consent the reason is, that, since they are maintained by his abilities, a gift or alienation, which may weaken his power to *maintain* them, would be immoral. All subjects, residing with the king's assent on land owned by him, are occupied in the acquisition of wealth, with his assent they may possess land, and if it be seized by another, the king will compel him to restore it. therefore it is proper, that they should make gifts or sales with his assent. As long as a pupil resides with his teacher, he should not even eat without his order, *because it is his duty* to please his teacher. thus it is recorded in the *Mahabharata*, that UPAMANYU became blind from eating leaves of asclepias, when forbidden to take

\* Cited in this place without the name of the author, but the three first verses are quoted as NA 220A in the third article of the second section, the subsequent texts are cited from CA 77A 1A in Book I

food. A student should not make a gift, sale, or other alienation without his teacher's permission. Unmarried daughters, and other members of the family, are dependent; they can do nothing without the consent of the householder; for the master of the family partakes of the virtue and vice resulting from the acts of women. It cannot be established, that a gift of their own property, by these persons, is invalid without the assent of their respective superiours: nor does any one say, that, while there is a teacher, the student's gift of his own paternal property is invalid without the assent of his preceptor. Similarly therefore, a gift, made by a householder though he have sons living, is valid without their assent; for it would be irregular to assign several meanings to the word dependent under the same head: but it is forbidden to give away, without the assent of the sons, property, whether moveable or immoveable, which has descended from the paternal grandfather.

THE sense of the last text (XV 5) is, that the act of a minor, under the age of sixteen years, is invalid because it is the act of an infant: after that age, his acts are valid; but it is necessary, that he should take his father's orders. If it be said, that the sense of the text is this: after the age of sixteen years a youth is independent, if his parents be dead; to prevent the validity of a sale or alienation by an infant, under the age of sixteen years, whose parents are dead, or by a youth, above that age, whose parents are living, two conditions are specified; his age of sixteen years, and the death of his parents: this interpretation is denied; for the text, mentioning that "he is *considered as acquainted with affairs*," shows him qualified for civil affairs in his sixteenth year, and independent on the death of his parents. If "minor" and "dependent" were held the same, then NA'REDA would not have distinguished a minor from a person who is not his own master (LIII 2); therefore, in that text, "not his own master" also denotes want of ownership, not merely the dependence of a son, slave, or the like; else it might be objected, that a gift by a stranger, not enumerated among void gifts, would be valid. But a "person who is not his own master" has been explained by authors, "son, slave, or the like," not supposing that gifts might be made by strangers, but considering the possible doubt, whether from near connexion the gift of a son, slave, or the like, be valid.

DEPENDENCE, declared in this text (XV), shows that consent should be taken:

taken : consequently a gift made, to the injury of the family thereby deprived of subsistence, is *nevertheless* valid, and the receiver may dispose of the effects at pleasure ; but the donor commits a sin, and therefore he shall be fined, and must perform strict expiation. Such is the construction, according to JI'MU-TA-VA'HANA, and maintained by many *Gauriyas* : and JI'MU'TA-VA'HANA remarks on this point, that the father has power over precious stones, and other *moveables* inherited from the grandfather ; and that it does not appear immoral to give away immovable property exceeding the subsistence of the family.

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IF it be alleged, that a contract made by a person not independent is invalid ; and, since a contract made by a person who is not his own master is void (LIV), since the father is not independent in regard to what has descended from the grandfather, therefore his contracts in general being invalid, surely his gift is null : a contract, made by a younger brother receiving food only, being invalid, surely his gift is null ; as contracts made by such a brother are not allowed by the wife, so it is declared, that a father has not power to alienate the whole of his immovable property (XIII) : if this be alleged it must be considered, that " not independent " there means " not in his own power " (LIV) ; and a contract, made by a person influenced by lust or the like, is void (LIII), because in this instance, there is such a want of self dominion, and that want of self command prevents voluntary election. But that is not the case with a father in regard to wealth descended from the grandfather, for there is nothing to prevent his voluntary action. As for the instance of the invalidity of a contract made by a younger brother receiving food only, this must be understood of a case where the younger brother has consented to *subjection*, or, from minority or other cause, is incapable of proper choice. Therefore this text (XV 1) may be well explained as coinciding with that, which directs that the other brothers should live under the eldest brother. and these texts having been otherwise explained, and the gift of wealth inherited from a grandfather not being included under the title of void gifts, the text of YA'JNYAWALKYA (XIII) is considered as a *moral* prohibition of *such* gifts.

" THE gift of a man's whole estate is valid ; for it is made by the own-

" cr :

“ er · but the donor commits a moral offence, because he observes not the  
 “ prohibition ”

*The Smṛitīśara*

ON the validity of these gifts, two opinions are set forth, the subject will be further discussed under the title of what may be given (Section II, Art. I).

In fact, men waste all their estate, and even their persons, on the *solemnities at the birth of a son*, but, from the text which expresses, “ a wife is a friend in the house of the good,” and from the advantage shown *in the married state*, greater affection is borne to the wife, the maintenance of her and of others being therefore requisite, how should a householder, destroying their subsistence, give his whole estate to another for civil purposes, unless he be insane or distempered? If the persons entitled to subsistence be not excessively vicious, and the householder, being mad, give away *his estate*, the donation is void, for a gift by an insane person is enumerated by NA’REDA among void gifts but, if those persons be excessively vicious, they forfeit their title to maintenance, and the donation may be valid even according to MISRA’S opinion. But if he make the gift, thinking virtuous persons to be vicious, then, since the householder could not distinguish right from wrong, his gift is not valid. The whole subject should be similarly examined: and if at any time it be contested whether such a gift be valid or null, it must necessarily be then determined which opinion is best.

If a king give the whole of his dominions to his eldest son qualified for the empire, although his other sons be void of offence, the gift is valid, provided it be the act of a prince neither insane nor otherwise disqualified, for it is done in conformity with the practice of former kings (as shown in sacred and popular histories) without offence on the part of the other sons, or of their father. Thus DES’ARAT’HA\* intended to commit his kingdom to RA’MA, in the presence of VASISHT’HA and many other sages, and in presence of the citizens *at large*, although BHARATA and his other sons were faultless, but afterwards, excluding RA’MA and the rest, he gave his kingdom to BHARATA, as a boon to CAICE’YI † Even now it is seen in

\* Fifty fifth of the four 12 -

† Wife of DES’ARAT’HA

practice, that entire kingdoms are severally held by one prince, although he have brothers.

SOME, remarking that the kingdom of *AYODHYA* was not divided, hold that kingdoms are indivisible, on the authority of custom, although it be not expressly declared in the text of any sage.\* Though one kingdom may have been undivided, can the practice be grounded on the *Vēda*? may it not have been some custom accidentally *established*? Let it not be said, that the consecration of the eldest son, to the exclusion of the rest, appears from the speech of *VASISHT'HA* in the *Rāmāyana* of *VĀLMĪCI*.

“ AMONG all the sons of *ICSHWĀCU*, † the first born is king;  
 “ thou, son of *RAGHU*, ‡ art first born, and shalt this day  
 “ be consecrated to the empire :

2. “ This prescriptive law in thy family thou canst not now  
 “ reject, O son of *RAGHU* ! rule, like thy father, far famed  
 “ prince, the vast empire of the gem-producing earth.”

THE difficulty is removed by limiting this rule to the posterity of *ICSHWĀCU*, for he says, “ among the sons of *ICSHWĀCU*,” and adds, “ in thy family.” Shortly before *the passage quoted*, and after the curse pronounced by *JĀBA'LI*, *VASISHT'HA* says :

“ *JĀBA'LI* knows the course of this world ; he has said this,  
 wishing to dissuade thee.”

IT is implied by this verse, that the sages utter what is calculated to dissuade *RA'MA* from his intention of retiring to the forest in compliance with his father's commands. It may therefore be said, that the speech is adapted to dissuade *RA'MA* from his design of residing in the forest, and does not esta-

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\* This digression is not altogether misplaced, for the great possessions, called zemindaries in official language, are considered by modern *Hindu* lawyers as tributary principalities, and it might seem necessary to determine whether they be alienable and hereditary by the same rules with other landed property.

† Son of *Manu*, and first of the family named Children of the Sun. ‡ Fifty third of the solar race.

bliss an *universal* law, that the first born shall take the kingdom. When RA'MA ascended to the abode of LACSHMĪ, his own sons, and the sons of his younger brothers, were severally consecrated to different portions of the empire : now RA'MA, wholly wise and the instructor of mankind, did not act inconsistently with the law.

IT should not be argued, that, among the descendants of ICŠHWA'CU, the eldest may not have been *always* consecrated to the empire ; but it was practised in the family of BHARATA : \* thus when PA'NDU retired to the forest, his kingdom, governed by DURĪTARĀ'SHTRA, † fell under the domination of DURYÓDHANA ; but recovered by BHĪMA and his brothers, was enjoyed by YUDHISHT'HIRA, and not shared by his brethren : therefore a kingdom is indivisible : but the inauguration of the sons of LACSHMANA, mentioned in the *Rámáyana*, was not a consecration to the paternal kingdom, but to new dominions given at the pleasure of the donor, and conquered by their father : thus the two sons of BHARATA were consecrated kings of *Gandharva* conquered by BHARATA ; the two sons of SATRUGHNA were consecrated kings of two cities founded in the forest of *Madhu*, which had been conquered by SATRUGHNA ; and two cities, founded in the region of *Cárapar'ba*, were given to the two sons of LACSHMANA. The younger brothers of RA'MA, and the younger brothers of YUDHISHT'HIRA, *who were both* images of the supreme God and of deities, (*the first* born to slay RA'VANA ; the latter, to relieve the earth from *the* burden of a multitude of tyrants ; ) may have surrendered sovereign power from respect to their elder brothers.

IT is said, that the speech of YUDHISHT'HIRA to ARJUNA, in the *Mahábhárata*, is delivered with consideration of the respect due to ARJUNA and the other brothers, in the order of seniority ;

“ THE brave BHĪMA-SE'NA is worthy of dominion : what is empire to me, who am *thus* unmanned ?

2. “ I cannot bear these reproaches, which you utter in wrath : let BHĪMA be king ; I wish not to live, O Hero ! depressed as I now am.”

\* Twenty second of the lunar race.

† The blind elder brother of PA'NDU.

IN answer to the objection, how can YUDHISHT'HIRA, speaking from his own affliction, be affirmed to respect ARJUNA as next in seniority? It is added, that he acknowledged it on account of his dejection at his own unfitness for war; and there is no intention of denying the seniority of ARJUNA, accordingly the consecration of the five sons of YAYATI,\* an ancestor of BHARATA, is mentioned in the *Ilervanśa*, and the consecration of other princes, both in this and other families, is also mentioned in the *Ilervanśa*, and other works: such were NRIGA, NARA, CRIMI, SUVRATA and SIVI, sons of UŚINARA; VRISHADARBHA, SUBIRA, CE'CAYA, and MADRA, sons of SIVI;† and MUDGALA, SRINJAYA, VRISHADISHU, YA'VINARA, and CRIMILA'SWA, sons of VA'YA'SWA, and surnamed PANCHALA. The inference is denied; for there is no proof, that a partition was made of their paternal kingdoms: and it is difficult to establish the great respect shown by LACSHMANA and the other brothers of RA'MA, by BHIMA and others brothers of YUDHISHT'HIRA, by DUHSA'SANA and other brothers of DURYODHANA, and by all others similarly circumstanced. If BHIMA, ARJUNA, and the rest, through respect alone, surrendered the empire to which they were entitled, why did they not yield their common wife DRAUPADI to YUDHISHT'HIRA alone?

BUT, in fact, a kingdom should be divided among virtuous brothers, able and willing to protect it: for sages have not inserted kingdoms under the title of indivisible property. It does not become men born in these days, to imitate the conduct of RA'MA, YUDHISHT'HIRA, and others, who were endued with immeasurable strength, courage, self-command, virtue and knowledge, and were attended by VASISHT'HA and other sages. The speech in the *Rāmāyana* ("among all the sons of ICASHWACU, the first born is king &c.") is adapted to dissuade RA'MA from retirement in the forest; for SATRUGHNA divided and gave to his sons the kingdom which he acquired in the forest of *Mad'bu*.

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LET it not be objected, that, were it so, VASISHT'HA would be a liar. For,

\* Fifth of the lunar race

† Descendants of ANU, son of PURU, and to whom the north was allotted by that prince. In the *Bhāgavata* four sons of UŚINARA are named, SIVI, VARHA, SAMI, and DACSHA.

adverting



adverting to the fact, that the first born happened, in *all* previous instances, to be consecrated to the empire, he mentions that fact. As it is not expressly declared, that the sons of US'INARA received the paternal kingdom, so it is not declared, that they received any other than the paternal dominions. Consequently there is no proof, that a kingdom is indivisible: but those, who are qualified to govern the realm, receive kingly power: and those, who have great qualifications, abandon the paternal dominions and conquer other realms; but do not reassume the hereditary empire. The government of the realm, the protection of subjects, and the payment of tribute by modern princes subject to a paramount sovereign, may, in this view of the settled usage, be determined with little *exertion of intellect*.

We infer from a passage of the *Adhyātma Rāmāyana*,\* "a son, who obeys not his father, is dirt," and another of the *Srī Bhāgavata*, "it is thy father's command," that the son, who refuses his assent to the father's gift of chattels, shall be restrained from such perverse conduct: nor is it questioned, but he may have some share of the paternal effects. However, the history of kingdoms shows, that, to the exclusion of this son, one eminently endued with the virtue of justice, and other excellencies, is entitled to the royal authority. If the maxim, that a kingdom is indivisible, be not deduced from collections of law, still the kingdom would with difficulty be taken by all the brothers. Thus SO'MACA, descended from the PANCHĀLA, had a hundred sons; and DRUPADA, son of PRĪSHATA the youngest of those sons, is mentioned as king in the *Herwans'a*: of the rest not even the names are recorded. In the *Rāmāyana* of VĀLMĪCI, CAICĒYI thus addresses MANTHARĀ distressed at hearing the intended consecration of RĀMA.

" IN RĀMA there is nothing inauspicious, nor is there  
 " malevolence in his great soul; have no apprehensions,  
 " therefore, hearing of RĀMA's consecration.

2. " A HUNDRED years after RĀMA, BHARATA shall sure-

\* Ascribed to VTA'SA. The passage, to which this short quotation alludes, is a speech of RĀMA, in answer to the reproaches of CAICĒYI, "Say not so, I would give my life for my father, I would ~~not~~ <sup>not</sup> deadly poison; I would forsake my wife Sītā, or my mother CAUSALI, I would relinquish the ~~throne~~ <sup>throne</sup>. He, who unbidden fulfils his father's wish, is first of sons, he, who does so when commanded, ~~is~~ <sup>is</sup> ~~not~~ <sup>not</sup> ~~of~~ <sup>of</sup> ~~the~~ <sup>the</sup> ~~rank~~ <sup>rank</sup>; he, who, though bidden, complies not, is ~~not~~ <sup>not</sup> ~~of~~ <sup>of</sup> ~~the~~ <sup>the</sup> ~~rank~~ <sup>rank</sup>." ~~is~~ <sup>is</sup> ~~not~~ <sup>not</sup> ~~of~~ <sup>of</sup> ~~the~~ <sup>the</sup> ~~rank~~ <sup>rank</sup>."

“ Iy obtain in his turn the kingdom of his ancestors.”

HERE is intimated the regular succession of brothers to the kingdom of their ancestors, not their partition of the realm. Had she seen, or heard of, the partition of kingdoms, she would require for BHARATA a share of the dominions, not regular succession to the whole. It is evident, that kingdoms in general were then indivisible.

IMMEDIATELY after the passage quoted, MANT'HARA' replies :

“ IF RA'GHAVA<sup>†</sup> be king, his son, and after him another, and again another, descendant will be kings.”

2. “ CAICE'YI ! BHARATA will be excluded from the royal race. All the sons of kings do not remain in obedience to the eldest :

3. “ But, of many sons, one only is consecrated to the empire. If all were kings, it would be the highest injury :

4. “ Therefore, spotless beauty, kings commit the affairs of government to their eldest sons, or to others more virtuous.

5. “ DOUBTLESS they consecrate to the empire the eldest by birth or excellence, and never commit the entire kingdom to his brothers.

IN answer to the supposition, that BHARATA might succeed after a hundred years, she says, “ if RA GHAVA (meaning RA'HA) be king, his son and remoter descendants will succeed, there will be no room for the inauguration of BHARATA consequently thou errest.” † By this CAICE'YI's supposition

\* *Raghava*, general patronymick of the posterity of RAGHU, but here restricted to RA'HA, as in the speech of VAS ISHT HA to RA'HA, already quoted

† This gloss is somewhat abridged from the original

is not confirmed; *on the contrary*, the title of the middle brother to succeed after the death of his elder brother although he leave a son, which, from what CAICE'YI' had said, might have been inferred as founded on scripture, is refuted. "The succession of RA'MA's posterity will exclude BHARATA;" that is, no one of the descendants of BHARATA will be king. If BHARATA, obeying RA'MA, be supported by him like a son, will he share the empire, or *ultimately* obtain the whole? In answer to this, it might be asked, do all the sons of kings obey the eldest? In fact they do not; therefore BHARATA will not long remain in obedience to RA'MA. Nor will he be allowed to share the empire. "Even among many sons, one only is consecrated:" that is, all the sons do not share the empire; how then should a brother *obtain a share, after the eldest has gained possession of the whole?* Usage, not the scripture, is the ground of consecrating one son only. Thus she intimates *in the third verse*: it would be an injury, if all were consecrated; that is, the empire would be impaired by division; or strife might arise between the brothers, should they reside in separate dominions. Therefore, "kings commit the affairs of government to the eldest son." May not the middlemost, or other son, be inaugurated? Since the eldest son, being *first*, cannot be passed over, his consecration is directed: but, if he be vicious, another son, who is virtuous, may obtain the kingdom. Consecration to empire is thus shown; therefore, *she adds*, the eldest son of RA'MA, and not BHARATA, will obtain the empire.

It should not be objected, that the speech of MANT'HARA' is intended to excite discord, and is no authority. Such a disposition would not be excited *in the mind of* a hearer by the suggestions of a person speaking inconsistently with the reason of the law, with express ordinances, and with received usage: it may be affirmed, that the speech of MANT'HARA' is not inconsistent with these three. It is consistent with the reason of the law; for she shows the argument of it: *and* it is consistent with settled usage; for VASISHT'HA subsequently declares, that "among all the sons of ICISHWA'CU, the first born "is king:" and the doubt abovementioned, whether the declaration of VASISHT'HA be restricted to the posterity of ICISHWA'CU, is obviated by the general assertion of MANT'HARA'.

It should not be objected, that, were it so, the allotment of a divided kingdom to the two sons of SATRUGHNA would contradict that assertion: and it would be inconsistent with an express ordinance (Book V, v. CCCLXVIII); for, in the want of express texts of law, partition by a father ought to be made in the same mode with partition among heirs. If no contradiction be apprehended, there is nothing to prevent partition: and the reason of the law has more authority in judicial procedure, than *the letter of express ordinances*. Thus MISRA says, "civil law is indeed founded on reason, not on revelation;" that is, he does not lay much stress on the *Vêda* in judicial decisions (for a text of the *Vêda* on partition by a father is preserved by BAUDHĀYANA); but establishes the superiour authority of the reason of the law, in comparison with *the letter of express ordinances*.

SOME explain the second verse, "all the sons of kings do not retain life, when the eldest brother remains:" and they quote the remainder of MANT'HARA'S speech.

"RA'MA and LACSHMANA are closely united in mutual friendship; their brotherly affection, like the union of the twin sons of AS'WINÌ, is known to the world."

2. "RA'MA, therefore, will in nothing injure LACSHMANA; but, doubtless, he will injure BHARATA.

3. "THY son therefore must hasten to the forest from thy mother's house: such must be his fate."

"RA'MA does not regard BHARATA, as he does LACSHMANA: the life of thy son (now residing in his maternal grandmother's house) will therefore be attempted by RA'MA, when he has obtained the empire; and, to save his life, BHARATA must retire to the forest." This they hold to be implied by this speech. But that exposition is wrong, for it would be a vain repetition of what had been already said, and would be spoken without cause.

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\* Literally, "RA'MA is closely united to the son of SUMITRA, and LACSHMANA, to the descendant of RACHU;" to avoid ambiguity the patronymicks are omitted, and the phrase shortened

THEREFORE, should a father hearing these instances from the *Purānas* and other works, commit the kingdom to his eldest, or other virtuous, son, the gift must necessarily be considered as valid, *even* according to the opinions of MISRA and others: there is no difficulty in asserting, that the nullity of gifts, as mentioned by them, supposes cases other than *the gift of a kingdom*; for a different practice in respect of royal succession is mentioned in the *Rāmāyana*.

SHOULD he commit the kingdom to his daughter's son or other *remote heir*, although his *own* son be void of offence, then indeed it should be determined as is proposed; but, if he make a provision for the support of his other sons, and give his kingdom or other landed property to one son, then the gift is valid according to all opinions; for his family is not *thereby* deprived of subsistence. It is not proper to assert, that he, who has power to give away the person of his son, has not power to give away immoveable property, without the assent of his son.

IF, making a provision for sons void of offence, he give his kingdom to his daughter's son, or to a stranger, what is the rule in that case? The gift even of a kingdom is valid, as it is of *other* landed property; for no special prohibition, nor any such usage, is found in regard to kingdoms. But *no father, who distinguishes right from wrong, would be so disposed*.

IF a king paramount, viewing the instances of kingdoms given by a father as abovementioned, give the whole kingdom to one brother, without intending an injury *to the rest*, he commits no offence; for he is equal to a father. But if the father die after giving away his kingdom, and the king paramount direct, that it should be disposed of according to law; in this case, it does not appear consistent with the reason of the law, that one brother should take the whole, without the assent of the rest.

WHAT is the "subsistence of the family," speaking of the sons of kings? As much as each consumes in food and apparel: not merely enough to support life; for a man, retiring to the forest, may support life upon leaves, roots, fruit and the like; and the subsistence of the family, mentioned

by all fides, would be unmeaning. But should another of the king's sons say, "needing as much food and as much raiment as this anointed brother, I give as much to the poor and helpless. these wants cannot be supplied out of that appanage," his claim should not be admitted by the paramount: no other, not even his father, can be equal to that *consecrated brother*; for the law admits, *that a king is a portion of the deity* of INDRA and other deities, and royalty obtains much reverence. Even *Brabmanas* pronounce the praises of kings. *Brabmanas*, reverence themselves even in the sight of deities, for to them are duties committed, to them are the *Véd*s intrusted, and to them is great favour shown by the supreme ruler, because, contemning riches, they accept a subsistence on alms alone, in subjection to others. Thus, in the *Sri Bhagavata*, CRISHNA says of SANACA and the rest.

"SRI,\* for whose momentary regard others perform austerities, deserts not me, (though I need her not,) because I acquire merit from respect shown to these, the dust of whose lotos-like feet is holy, and who instantly remove every foulness.†"

THOUGH some modern priests are, in a certain degree, lessened by their misconduct, still great respect should be shown to them, in honour of former generations, and because it is said *by a deity* in another *Purana*, "a *Brabmana*, learned or unlearned, is my body" it is not proper, that one bound to respect should notice the faults of a person to whom reverence is due

FROM apprehension of offending very great persons, it is not *here* examined whether some modern princes, who are not independent in the government of their subjects, but merely employed in levying the revenue of the paramount, should, or should not, be acknowledged as kings.

## XVI.

YA'JNYAWALKYA:—IN distress for the maintenance of the fa-

\* Abundance, or prosperity, personified.

† According to the gloss of SWAMI, which it is unnecessary to translate.

mily, *property* may be given away, except a wife or a son : but not the whole of a man's estate, if he have issue living ; nor what he has promised to another.

WHAT has been promised to one person in this form, " I will give it to thee," may not be given to another : but, if the prior promise were made to a person not legally capable of receiving the gift, then it may be given to another : for a text (XLVII) shows, that there is no danger in withholding what has been promised to a person incapable of receiving. It is observed in the *Retnâcara*, on the text quoted (XLVII), that want of religious qualification incapacitates for *the receipt of gifts* : this will hereafter be discussed.

WHAT is the rule if a man give to one, what he has promised to another ? MISRA says, every gift of what has been promised, is invalid. This should be examined ; for whence is it deduced ? *It is said*, from the texts of YA'JNYAWALCYA and others (XVI &c.) : but the obvious meaning of these texts forbids the gift, as it does the donation of a wife, a son and so forth ; and MISRA himself says, that civil law is founded on reason ; in proof of which the text of VRĪHASPATI is quoted :

## XVII.

VRĪHASPATI:—A DECISION must not be made solely by having recourse to the letter of written codes ; since, if no decision were made according to the reason of the law \*, there might be a failure of justice.

AND here, effects voluntarily promised by the owner not *immediately* becoming the property of another, the reason of the law is not applicable.

SHOULD it not be established, that there is no independence in regard to what has been promised ; and thus the gift is null, because it is made by a person who is not uncontrolled ? No ; for in that instance, want of independence is not proved ; the obvious sense of the texts of YA'JNYAWALCYA and

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\* Or according to *various* usage ; for the word *Yat* admits both senses

others *merely* forbids the gift ; and, in the title of void gifts, want of independence denotes want of ownership.

It is argued, that, from the term, "not his own master," in the title of void gifts, it is not understood, that he is not owner ; but, wherever the term "want of independence" is technically employed, every gift by such a person, who is not owner of the chattel, is void ; for the text of *MENU* and *YAMA* declares null such a gift or sale *made by any other than the true owner* (Chapter II, v. XXVII) ; and fold is employed in the text of *NA' REDA* (Chapter II, v. XXVI) in the comprehensive sense of given, or otherwise aliened : even a gift of his *own* paternal estate, by a pupil residing in the family of his teacher, may be void ; or, if his want of independence in regard to his patrimony be not admitted, and a gift or alienation of wealth acquired by himself, or otherwise, be then made by a son, whose father is living, without the assent of the father or other *superiour*, some part of *MISRA*'s opinion should be admitted, though contrary to the opinion of *Ji'MU'TA VA'HANA* : and as for what has been said, that want of independence, in respect of what has been promised, is not proved ; *even* that is not established by the texts of *YA'JNYAWALCYA* and others : thus, if he be independent, how should he be fined ? The amercement for a gift of what has been promised to another, proves his want of independence ; it is not consistent with common sense, that a man should be fined, who gives that, in respect of which he is uncontrolled : neither is want of ownership understood from the term "want of independence," but subjection to another ; and, in the dictionary of *AMERA*, independent, or his own master, is opposed to dependent, or subject to another : in like manner, a gift of female property by a wife, without the assent of her husband, is not valid ; but the gift of female property by a wife, on a general permission to give *presents*, is valid ; it is not required that the number, or quantity, be specified : but, for a gift of her husband's property, it is requisite, that the number or quantity be specified in this form ; "give so much wealth:" this distinction does exist ; yet the term "exclusive dominion" is applied to female wealth ; or the woman has exclusive dominion, as declared by the text, "the absolute exclusive dominion of women over nuptial gifts is perpetually celebrated:" and the same law is applicable



cable even to other persons, who are technically described as "subject to control."

ALL this argument is contradicted; for even MISRA does not proceed to so great a length in regard to the separate property of a woman; and gifts of their own effects by subjects, without the assent of the king, and by younger brothers, without the assent of the eldest brother, are seen in hundreds of instances.

THEREFORE, should a man give to one, what he has promised to another, the last donee shall obtain the effects; but the king shall impose an amercement on the donor. It is not, however, expressly ordained, that an equivalent shall be given to the person, to whom the promise was made. If the first promise be made for civil purposes, and the thing be afterwards given for religious uses, what is the law in that case? The answer is, NA'REDA promising gifts for civil purposes (II 2), and declaring unalienable what has been promised to another (IV 2), merely forbids the giving, for such purposes, what has been promised to another: it follows, that there is no offence in such a gift for religious uses; and that the gift is valid. But in fact, should a man fraudulently give, for religious purposes, what has been promised to another, although he have other effects proper to be given; and do not satisfy the person to whom the promise was made; it is consistent with common sense, that he should be amerced. This will be further examined in another place.

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## SECTION II.

## ON ALIENABLE PROPERTY, AND ON VALID OR IRREVOCABLE, AND INVALID OR VOID GIFTS.

## ARTICLE I.

## ON ALIENABLE PROPERTY.

## XVIII.

VRĪHASPATI :—A MAN may give what remains after the food and clothing of his family: the giver of more, *who leaves his family naked and unfed*, may taste honey at first, but shall afterwards find it poison.

2. Of houses and of land, acquired by any of the seven modes of acquisition, whatever is given away, should be delivered, distinguishing *land as it was* left by the father, or gained by the occupier himself:
3. At his pleasure he may give what himself acquired; a pledge must be disposed of by the law of pledges, *or subject to redemption*; but of property acquired by marriage, or inherited from ancestors, not every gift subsists.\*
4. *But* if what is acquired by marriage, what has descended from an ancestor, or what has been gained by valour, be given with the assent of the wife, of the coheirs, or of the king, the gift has validity.
5. HEIRS have a lien equally on the immoveable heritage,

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\* According to another interpretation, "the whole ought not to be aliened."

whether they be divided or undivided ; and a single parcener has no power to give, pledge, or sell the whole.

THE last text is attributed to VYA'SA by JĪMŪTA VA'HANA ; and *bereri* RAGHUNANDANA follows him. What exceeds the food and clothing required by the members of the family, who are entitled to maintenance, as abovementioned, may be given away. Otherwise, the family wanting food and clothing *in consequence of more being given*, the donor's conduct is not virtuous.

“ THERE is sin in the gift of what does not exceed, and virtue, in the gift of what does exceed, *the proper food and clothing of the family.*

MISRA.

It is intimated, that what does not exceed the maintenance of the family, should not be given away, even for religious purposes ; but it is also intimated, that the gift of what should be appropriated to the food and clothing of the family, is valid. “ The giver of more may taste honey at first : ” by this it is intimated, that bliss is at first obtained ; thence it follows, that the religious purpose is accomplished ; and that purpose cannot be accomplished, unless the gift be valid : therefore the gift appears to be valid.

IN the *Smṛitijāra* the validity of the donation is admitted : “ a man's own gift is valid, because he has property, which is the established cause of validity.” But it is not admitted, that the religious purpose is attained ; for he has not observed the commands of the law.

SOME hold, since the text directs that a man should give what remains after feeding and clothing his family, and since it is not applied as an exception to the gift of more ; therefore his duty is not fulfilled, if he give not what exceeds the food and clothing of his family. But this does not seem proper ; for the text relates to civil affairs, and it is irregular to ground on it a rule for *religious* gifts. A cause of failure in religious merit does not establish demerit. Thus, the bathing in the Ganges being accidentally accomplished, in neglect of advice not to go that way to the Ganges, by which was implied the danger of meeting tigers or the like, the religious

religious purpose is *nevertheless* obtained: but it is not obtained by the gift of property belonging to another owner; for this is not a gift in the form of a relinquishment: vesting property in another after divesting his own.

ACCORDING to the opinion of those who maintain the invalidity of the gift, the religious purpose is not obtained. But the expression, "the giver may taste honey at first," is not taken literally. His conduct, in delivering his whole estate into the hands of another, may at first favour like honey, by affording mistaken pleasure, or causing present satisfaction; but afterwards it becomes poison, because it is punished in a region of torment. There is no difficulty in considering this as relating to civil gifts. But it may be applied indiscriminately to religious merit: otherwise, the gift or sale being sinful, but religious merit cancelling the sin, or himself not being born again, the religious merit of the donor would be inconsistent with his "afterwards finding it poison."

ACCORDING to the opinion of MISRA, this text may imply the invalidity of a gift, where a man's whole estate is given; and, according to the opinion of JĪMUTA VĀHANA, it may imply that the gift is valid.

### XIX.

CA'TYA'YANA declares what may and may not be given:—

EXCEPT his whole estate and his dwelling house, what remains after the food and clothing of his family, a man may give away, whatever it be, *whether fix or moveable*; otherwise it may not be given.

"His dwelling house;" one house, without which he himself, or his family, might want a dwelling. It is meant generally, comprehending a pond supplying water for common use, and the like.

Is not the excess above the subsistence of the family unmeaning, after excepting the whole of his estate? It should not be said, a gift of his whole estate might be made with a reservation of a single shell only. Were it so,  
his

his whole estate would be *an* unmeaning *exception*. Nor should it be said, the gift of the whole estate is excepted to prevent the possible gift of his whole estate by a man able to maintain his family on alms; for there is no authority for such an inference. It is not established, that a man, able to subsist his family on alms or the like, may not give away his whole estate: for it is the meaning of the ordinance, that the family should be any how supported.

SOME observe, that a man, though able to maintain his family on alms or the like, ought not to give away his whole estate; for, should alms or other means at any time fail, his family might be distressed. Still what can be understood from the expression his “whole estate?” The whole estate should be understood in the mode already mentioned; that is, the whole of his effects including what is required for the maintenance of the family until other property be gained. Such a meaning is deduced from the sequel, “what remains after the food and clothing of his family.” Or the excess above the maintenance of the family is expressly declared, *to provide* against the attempt of giving away even a trifle, when the family is but ill maintained out of the whole estate. Consequently, the gift even of a trifle, if it be not an excess above the subsistence of the family, is forbidden. Or the text may be read, “*sarvaswam grība varjitam*,” instead of “*sarvaswa grība varjantū*.” Consequently the whole of his own property (except his dwelling house) that remains after the food and clothing of his family, a man may give away: such will be the sense of the text. “The whole” is there mentioned to show, that moveables and immoveables are not distinguished. “His own;” by this term, deposits and the like are excepted: the sense is, his own several property; by which joint-property is also excepted. In concurrence with other sages, a distinction must be understood in respect of a thing promised, a wife, or a son. Here the condition expressed in the text concerning alienable property, that it must exceed the subsistence of the family, *shows*, that the gift of what does not exceed the subsistence of the family, is not valid; and the declaration, that joint-property may not be given, *shows*, that the gift of several property is valid. As in the command for performing a *ṛáddha* at the conjunction, it appears from the authority of the prohibition against performing a *ṛáddha* at night, that the





is gained by success in gaming, or the like, is excepted; it is a dishonest acquisition, for it partakes of the quality of darkness. The very same opinion is intimated in the *Chintāmeni*.

THREE, succession, occupancy and purchase, are allowed to all classes; conquest is peculiar to the military tribe; lending at interest, and husbandry or commerce, belong to the mercantile profession; and acceptance of presents from respectable men, to the sacerdotal class. These are virtuous means of acquiring property: but on failure of these, priests and the rest may subsist by other means allowed in times void of distress, such as husbandry and the like; or, on failure of these, by the best modes allowed in times of distress.

CULLU'CABHATTA.

## XXI.

MENU:—LEARNING, art, work for wages, menial service, attendance on cattle, traffick, agriculture, content with little, alms, and receiving high interest on money, are ten modes of subsistence.

In the *commentator's* gloss, which follows the text above quoted, declaring these to be modes of subsistence in times of distress, *he shows that* each of these modes of subsistence may be followed in times of distress by the person, to whom it is forbidden in other circumstances: as work for wages, menial service, and the like, by a man of the sacerdotal class; and so of arts and the rest. "Learning" (except that contained in the scriptures) as medicine, philosophy, *charms* counteracting poison and the like, practised for subsistence by all classes in times of distress, is no offence. "Art," as painting and the like. "Content with little;" for with content a man may subsist on his own, however little. "Receiving high interest on money;" lending on interest even in person, and so forth. By these ten modes a man may subsist in times of distress. Consequently a priest in *great* distress may depend even on menial service, arts, or the like, for his subsistence. Such is CULLU'CABHATTA's interpretation: but others argue, that, after declaring in the first text (XX) the modes of subsistence in times void of distress, this text (XXI)

(XXI) intends the modes of subsistence in times of distress, implying the preservation of life *only*. That however, in its consequences, coincides with the opinion of CULLU'CABHATTA.

BUT others again hold, that the practice of *Vaishyas* is allowed, by the following text, to a *Bráhmāna* in times of distress; but is on no account allowed in other seasons; for assisting to sacrifice, teaching the *Védas*, and receiving gifts and so forth, are declared to be the means of subsistence for a *Bráhmāna*.

## XXII.

MENU:—BUT a *Bráhmāna*, unable to get a subsistence by either of those employments (*his duties just mentioned or the duty of a soldier*), or a *Cshatriya*, unable to subsist by his own occupations, may subsist as a mercantile man, applying himself in person to tillage and attendance on cattle.\*

AND here, it is irregular to give such an interpretation to this text (XXI); for it is declared, that the modes of subsistence, delivered in the tenth chapter, are legal in times of distress: "Such, as have been fully declared, are the several duties of the four classes in distress for subsistence:" and the virtuous modes of subsistence for a *Bráhmāna* in such circumstances are declared in the text first quoted (XX); since the modes of subsistence for a priest alone are declared, beginning with the text, "Should a *Bráhmāna* afflicted and pining through want of food choose rather to remain fixed in the path of his own duty, than to adopt the practice of *Vaishyas*, let him act in this manner," and ending with this text (XX). Immediately after it, the modes of subsistence for a *Cshatriya* in distress are delivered in the text quoted (XXI); and, next to that, a distinction is declared in regard to interest on loans, which both texts permit the *Bráhmāna* and the *Cshatriya* to receive.

## XXIII.

MENU:—NEITHER a priest, nor a military man, should re-

\* See Menu, Chapter X, v. 82. In quoting the text, the compiler has omitted the question, and inserted the words "but a *Bráhmāna* or a *Cshatriya*." on this reading, it has been necessary to interpolate the text, because both employments are not allowed to the *Cshatriya*, T.

ceive interest on loans: but each of them, if he please, may pay small interest, for some pious use, to the sinful man, who demands it.

IMMEDIATELY after this text, the proper subsistence of a *Cshatriya*, in times of distress, is particularly mentioned; as the proper subsistence for the *Bráhmāna*, in such seasons, is mentioned in the texts, "Should a *Bráhmāna*, afflicted and pining through want of food &c." But in all these texts a *Vaiśya* is not even named; and a *Súdra* is subsequently noticed; how then can the text, "there are seven virtuous means &c." (XX) relate to the four classes? The answer is, YĀ'JNYĀWALKYA has in many places delivered a text applicable to the *Cshatriya*, and similarly describing ten modes of subsistence.

#### XXIV.

YĀ'JNYĀWALKYA: — AGRICULTURE, art, work for wages, science, receiving high interest on money, *the use of a carriage, retirement in mountains, service of kings, the office of king, and alms*, are modes of subsistence in times of distress.

BEFORE this he declares the subsistence of a *Bráhmāna* in times of distress.

#### XXV.

YĀ'JNYĀWALKYA:—A PRIEST, *when* oppressed by calamity, eating food received from any man whomsoever, is not tainted by sin; for he is equal to the igneous sun.

THEREFORE the text, "There are seven virtuous means of acquiring property" (XX), describes the virtuous means of subsistence for a *Bráhmāna* in times of distress; and the text, "Science, art, &c." (XXI), describes the virtuous means of subsistence for a *Cshatriya* in such circumstances: and there is no vain repetition in *twice mentioning* lending at interest, and husbandry or commerce, explained by CHANDE'SWARA, VĀCHESPATI MISRA and CULLU'CASHATTA, receiving high interest on money; and agriculture or traffick.

IT should not be objected, that conquest and the like cannot be virtuous means of acquisition for a *Bráhmāna*: for MENU declares, that the highest beatitude may be attained by *Bráhmānas* practising, in times of distress, the duties propounded for *Cshátriyas* and the rest.

## XXVI.

MENU:—SUCH, as have been fully declared, are the several duties of the four classes in distress for subsistence; and if they perform them exactly, they shall attain the highest beatitude.

THIS opinion should be well examined.

IT seems to be declared by the text of VRĪHASPATI (XVIII 2), that property partaking of the qualities of passion and darkness is unalienable. CHANDE'SWARA makes no remark on this point. But MISRA says, "the expression is comprehensive: he may alienate, at his own pleasure, his own several property any how possessed; but property, held in coparcenary with another, cannot be alienated without the consent of the coparcener." MISRA's meaning is, that the words of VRĪHASPATI, who was profoundly versed in the law, intend property legally acquired, and do except any *several* property from unalienable things, but do not except from alienation property acquired by other than those seven means

As for the distinction declared by NA'REDA in regard to property partaking of *the qualities of truth, passion and darkness*, the ranking of usury and the like under the quality of darkness is pertinent as it relates to *Bráhmānas* and the rest in times void of distress.

## XXVII.

NA'REDA:—*What is acquired by teaching the Védas, by courage, or devotion, what is received with a damsel, from a pupil, or for a sacrifice, and what is obtained by inheritance, are celebrated by sages as the seven fold distinction of pure property.*

2. WHAT is gained by usury, agriculture and traffick, or *received* as tolls or as wages for singing, or *as a return* for a benefit conferred, is considered as property partaking of the quality of passion.
3. WHAT is acquired by servile attendance, by gaming, by robbery, by *inflicting* pain, by disguise, by larceny, and by fraud, is considered as partaking of the quality of darknes.

WHATEVER *several* property, acquired by any of these modes, is given away, even that was alienable; and the same should be observed of property acquired by art and the like (XXI); and so in other cases. Such, exactly, is MISRA's meaning.

"HOUSES and land, acquired by any of the seven modes of acquisition" (XVIII 2) is an expression used comprehensively. In the case of other moveable or immoveable property, if land, a house, or the like, be given away, it should not be resumed: this the sage intends to express. Consequently, should chattels deposited, or the like, be given away, the gift should be retracted. Such is the whole meaning. "As it was left by the father or gained by the occupier himself," is subjoined to limit the rule; and is elucidated by the next verse (XVIII 3). Such is the consistent method of authors.

BUT others explain acquisition, the means by which wealth is gained; intending property acquired by the means described in texts, which show virtuous and other modes, such as purchase and the like. Those several means, in which an act of the receiver is requisite for the acquisition, must be considered as the seven modes: and one is included in another; as robbery, larceny, the business of usury, and so forth. Consequently the number of seven is not contradicted. Left by the father signifies inheritance only; and gained by the occupier denotes the receipt of gifts and the like; it is meant of cases where no act of the receiver in expectation of gain is necessary to the acquisition: and property, partaking of the qualities of passion or darknes, is, without difficulty, comprehended in the text.

A DISTINCTION is propounded (XVIII 3) relative to property acquired by the occupier himself, which the former text had declared alienable. What is acquired by a donee, without relation to another, may be given at his pleasure, even without the assent of sons, brothers, and the rest: and the distinction is derived from the text quoted by JI'VU'TA-VAHA'VA (XIV). Immoveable property, as land or the like, and a corrody in the form of a fixed allowance payable by the king or other person, and bipeds, or slaves and the rest, a man shall neither give away nor sell, even though he acquired them himself, without the consent of all his sons. Such is the sense of the text (XIV).

Is a bird unalienable or not? Since it appears from the word "bip'd," that even a bird may not be given without *the assent of heirs*, should it not be *held* unalienable? No, for VR ĪHASPATI shows, that a decision inconsistent with the reason of the law must be avoided (XVII). On immoveable property, such as land or corrodies, children may be long subsisted. As it causes unlimited production of wealth, it is called an estate or *funds of support*: the loss of it is pronounced dishonourable in a text of NA'REDA (XII), and the gift of it, without the assent of sons and others using the estate, is called loss in *this* text. Now a slave is such, for by agriculture or the like he is able to gain much wealth for his master. It should not be objected, that great riches may be acquired even by receiving high interest on gold or the like. Though *gold*, lent at a high rate of interest, may be equal to immoveable property, *affording wealth* like the alchymist's stone, or like the gem which daily produces gold, yet, if it be not lent at interest, there is nothing to prevent alienation. Or it may be understood, that, if a contract be made for interest, *then gold or the like*, producing wealth by means of that contract, should not be given away. If that be the case, may not wealth be acquired, in some instances, even by means of birds—for example, by the advanced price on birds well taught? This should not be granted were it so, the same might be extended even to quadrupeds, such as sheep and the like, and bulls or other animals employed in husbandry. If it be argued, that land, a corrody, or the like, may be understood to be declared in the text by the word "immoveable," and slave, bird, or the like, by the word "biped." for it is a rule not to strain a text, and when the literal sense of the

terms suffices, there is no occasion for recurring to the reason of the law; and the text of *VRĪHASPATI* therefore is not applicable in this instance: the answer is, dissimilar rules in respect of birds and sheep, entitled to equal consideration, would be inconsistent with common sense. Men of some mixed classes subsist by the exhibition of snakes; should they give one away without the consent of their sons, it would appear to be a loss of the estate: yet a snake is not a biped. Since the sons and the rest of the family might be maintained, even after giving away a snake, by catching another, may it not be said, that there is no loss of estate? The same might be alleged in regard to a gift of land by *Brāhmanas* and others. As land is dependent on the king, may not the sons and others recover it, and thus be exempt from difficulties? Be it any how in this instance; but those, who subsist by the exhibition of apes, may fail in catching another, and thus be reduced to difficulties; for by labour must this end be attained; and it cannot be accomplished without much toil in the display of science, and exertion of art. On this subject it is said, whatever mode of subsistence long maintains persons of a particular class, even that is their real estate; and is intended by the word "immoveable;" biped literally signifies a bird, a man &c. and these may not be given without the consent of the donor's sons. This finally is the sense.

*It is argued that* particular birds, being valuable bipeds, and slaves, being endued with excellent qualities and the like, may not be aliened without the consent of sons. It should not be objected, that a thing sold for any price may be valuable. Whatever bears a greater price, compared with other things of the same nature, is costly. Nor should it be objected; in comparison with what must it bear a higher price? If it be said in comparison with any bird; then, even what does not commonly bear a great price, may be dear in comparison with a bird accidentally sold for a less sum; and thus, that only is cheap, in comparison with which no bird has borne a less price; and all others are dear: and, since low-priced birds may be scarce, or all may be valuable, such great refinement would be fruitless. A very high price may be distinguished, with the king's consent, by comparison with the cost of birds accepted by persons in general; and so, in other cases. This exposition may be questioned; for great value is not implied, by the reason of the law, in declaring immoveable

property and the like to be unalienable. Thus, it is not consistent with approved usage, that, by a comparison with land measuring twenty cubits, deemed valuable in comparison with the quantity of a *pala* of gold, land measuring a single cubit should be aliened at the pleasure of the occupier alone. This and other points may be discussed in many ways.

“ A PLEDGE must be disposed of by the law of pledges” (XVIII 3). As his own interest *in the pledge*, such should he make another's.

The *Retnâcara*.

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THE meaning is this: any man, pawning a chattel, receives a loan from some person; if the creditor give that pledge to *another* person, then the gift of the pawn is the same with a gift of the debt: therefore, as the debtor paying his debt to his creditor might redeem the chattel, so, in this instance, paying the debt to the donee he recovers the chattel. It is mentioned to make it evident that a debt *demandable* may be given away or sold. In fact it is included in what may be given at pleasure. Consequently, if a pledge be received for a loan of paternal wealth, it is subject to the law concerning patrimony: but if it be received for a loan of what was acquired by the man himself, it is subject to the same law with his own acquired property. Thus some expound the law. MISRA explains this clearly. The form of *transferring a pledge* is subjoined, “ this thing was pledged to me, and is given by me to thee; it must be restored by thee to the owner, on receiving the amount for which it was pledged.”

BUT others hold, that, in the case abovementioned, when a debtor gives to any person a chattel which is in pawn, then the donee may obtain that chattel after payment of the debt: that is, as the debtor had an interest, or restricted property, in the thing pawned, so has the donee: and after the death of the donor, on failure of his sons or other successors to his estate, should the creditor or his issue be living, the donee, wishing to obtain the pledge, may receive it on payment of the debt. This in effect follows from what has been said; for, unless payment of the debt be the condition, there would be no restriction to property in the pledge: and RAGHUNANDANA observes, in the *Dâyabhâja tâttva*, that, “ if the pawn remain unredeemed on the

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the death of the feller or donor, then, since a property similar to that of the contracting party has been vested by sale or gift, the buyer or donee should redeem the pawn." Here, if the chattel pledged belong to the paternal estate, it is subject to the law respecting patrimony; but, if it were acquired by the man himself, it is subject to the law concerning such property.

IN these two opinions a mutual contradiction arises; that is, after a gift or sale of a pledge by a fraudulent debtor, on his death and on failure of sons or other heirs, the payment of the debt by the donee or purchaser *according to one opinion*, or non-payment of it *according to another*, is in either case an *unjust* disparity. The question may be thus discussed; in regard to the donee, be it as it may be; but a purchaser, having paid a fair price, would suffer great loss, if he must again pay the debt with interest; which would be inconsistent with common sense: therefore he may obtain the pledge without payment of the debt; and such a rule being equitable in the case of a purchase, the same may be established in the case of donation. It should not be objected, that the loss, falling on the creditor who advanced his own money and long preserved another's chattel, would be inconsistent with common sense. A similar loss falls on the creditor, after the death of the debtor, if the pledge have been destroyed by the act of God or the king, or by the fault of the debtor. Nor should it be objected, that, where a thing, already transferred to another, is sold, the loss falls on the purchaser. The debtor has not transferred the thing *to his creditor*. Nor should it be objected, that, in this instance, the pledge is not destroyed by the act of God or the king. The sale of the pledge is a fault on the part of the debtor, *by which the pledge may be lost to the creditor*.

## XXVIII.

*Smṛiti*, quoted by CHANDÉSWARA and RAGHUNANDANA:—If a man, having bailed or pledged a thing to one person, pledge or sell it to another, the last act shall prevail.

OTHERWISE, since the mortgage is cancelled by the redemption of it, there may be no obstacle to a valid gift or sale, even though a mortgage prevail. It should not be objected, that, supposing it to prevail, should

should a gift or sale be made after it, that contract would not be valid, even though the pledge be subsequently redeemed; for it is resisted by the mortgage, which was in full force when the gift or sale was made: but now, such a contract, made while a mortgage subsists, is valid, and the donee or buyer may dispose of the thing at pleasure, when it has been redeemed; and thus should the force of donation or sale be admitted. Then it would be proper to say, that, both being good in law, both have equal force. As a depositary cannot withhold from the purchaser a chattel, which had been bailed to him to be kept ten months, and which is afterwards sold within that period, so a mortgage is cancelled by the *superiour* force of a sale: therefore the purchaser can take the chattel from the creditor; and the debt remains unsecured by a pledge. But if the purchaser bought the chattel, knowing it *to be mortgaged*, he must necessarily be punished by the king: else, from the state of the times, established usage in regard to loans would be now infringed by the audacity of knaves. Contracts of sale, mortgage, and the like, must necessarily be made in the presence of the king's officers, and should be recorded by them. Yet if they were not present, but another person, who was by, prove the contract, the predominance of a sale, where mortgage is opposed to it, is declared by RAGHUNANDANA himself: "what has *superiour* force, even that is good in law." But here mortgage resists the owner's *power of disposing* of his effects at pleasure, and is not preceded by the annulling of property: and therefore, whether prior or subsequent, it is superseded by donation or purchase, which are preceded by the annulling of the former owner's property, and have *superiour* force. By the word "even," in the phrase, "even that is good in law," the invalidity of a weaker contract is intimated: and here the mortgage, as a weaker contract, being invalid, what should prevent the purchaser obtaining possession of that which is now become his own?

If it be said, since the expression, 'mortgage resists the owner's power of disposing of his effects at pleasure,' intimates an opposition to gift, sale, consumption, and many other modes of disposal; therefore a sale, though valid while a mortgage subsists, does not authorize the purchaser, now *become* owner, to dispose of the thing at pleasure: it is answered, the sale would

would not then be valid. Nor is this apprehended by RAGHUNANDANA ; for it would disagree with prior and subsequent works of the same author : therefore opposition to disposal at pleasure is effected by restraining a debtor, who attempts such an act, by means of the king's officers , not by preventing a purchaser, who is not liable for the debt, from disposing of the thing at pleasure. But the purchaser should see the thing, and have reason to suppose it is not pledged to any man, when he pays a price for it ; else he is punishable ; such is the induction of common sense : and he should obtain immediate possession ; for the sale may become void through want of possession during a long space of time ; and the mortgage would then be exclusively valid.

IN this instance, the creditor obtains another pledge from the debtor , or the debt should be immediately discharged. If the debtor die, the creditor may receive it from his son or grandson, or he may recover it from any other property whatever left by the debtor . he cannot withhold that pledge from the purchaser ; for no ordinance permits it.

RAGHUNANDANA remarks on the text above quoted (XXVIII), that the word *sell also* denotes gift annulling property. Consequently gift, sale, barter, and all other contracts divesting property, are intended.

THE moderns hold, that, if a man sell a valuable pledge for less than its worth, *that is*, less by the amount which is applicable to the redemption of the pledge, and with an agreement in this form , "on redeeming the pledge thou shalt have it," or if he make a gift or other alienation, with the same stipulation ; then the pledge should be reclaimed by the purchaser or donee in conformity with the text of YAJÑYAWALKYA (Chapter II, v. XXVIII). But in regard to pledges, since the owner's property subsists, it appears, that there is a distinction. Thus, where two contracts of gift and acceptance occur, since the property of the former owner is divested by the first donation, the gift last made by him is not valid, for it is made without ownership : and so, in regard to sale. But this is actually the foundation of validity in the gift or sale of a thing bailed or pledged, as declared in the text lately quoted (XXVIII) : therefore, should the same thing be hypothecated to two creditors, the validity of the last mortgage cannot be reversed ; for it is made

by the owner: and the validity of the former hypothecation being admitted, because it was also made by the owner, they may be equally good; but the first has not superiour force, since a decision inconsistent with the reason of the law is forbidden by VRĪHASPATĪ (XVII). Therefore, even in a contract of mortgage, some distinction, respecting the property in the effects, must necessarily be admitted, under the authority of which, even the purchaser of those effects may not dispose of them at pleasure, before the mortgage is redeemed. Such is the sentiment of RAGHUNANDANA.

WHAT is the distinction? Not a specifick difference inherent in property; for such a difference cannot be therein admitted, fluctuating with the variations of time; since specifick difference constitutes permanent species, and species is not regulated by time, produced with the production of substance, and destroyed with its destruction. Nor can another property arise therein; for there is a want of the requisites *to constitute a title*. Let it not be argued, that the distinction is individual, because the *Mīmāṃsakas* do not acknowledge genus and species separate from substance. There is no proof of such individual distinction.

It is said, the intention of the parties constitutes the distinction. Thus, when a thing is pledged, the debtor intends, and expresses in words, "let this chattel, belonging to me, remain with him; until the period expire, it shall not be enjoyed by me or my relations:" and therefore, by virtue of that declared intention, even a purchaser, like the debtor's heir, is debarred from the enjoyment of that chattel. Thus established usage in regard to loan and payment would not be infringed. Otherwise, no man would make a loan, apprehending that the debtor would sell to another what he pledged to him.

If it be said, as a bailment, made by the owner for a specifick period of ten months, is cancelled by a subsequent contract of sale; and setting aside the former owner's intention, (that it should remain with the depository to the end of ten months,) it must be delivered at the will of the present owner; so, even in this case, setting aside the act of the former owner's will it must be delivered at the pleasure of the present owner; else  
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the enjoyment of chattels pledged by a herdsman's wife, as authorized by her former lord, might subsist without the assent of her second husband: the answer is, the intention of a bailment made for safe custody only has little force, and is consequently superseded by the stronger will of the actual owner; and therefore delivery is proper in that case: but here, the intention of a pledge, being inferred from the loan, retains its force until the loan be repaid; and therefore it is not superseded: and the enjoyment of a thing pledged by a herdsman's wife, being authorized by her former lord, is honest.

THIS is confirmed by the opinion of RAGHUNANDANA: and the author of the *Mitācsharā* in effect admits the debtor's ownership in the pledge. According to the modern opinion, when a thing is twice hypothecated, the predominancy of the first hypothecation is founded on the pledge not being relinquished by the creditor, who has received it.

FROM the text cited in Book I (v. CCLXXI.) it appears, that the produce of a thing held by one creditor is applicable to the payment of the debt due to him, although the debtor have the ownership of it: or what has been artfully obtained by a creditor from his debtor, is applicable to the payment of the debt due to that creditor, not to any other. In this case, if a loan have been advanced on a pledge, the first lender is considered as entitled to the thing, not the last creditor. But this lender cannot be said to have a stronger title than a purchaser; for no ordinance declares it. By adequate punishment inflicted in such instances on the buyer and seller, the king may relieve the fears of lenders.

"PROPERTY acquired by marriage" (XVIII 3) supposes also what is gained by valour. Not every gift, with or without consent, subsists: therefore gifts of those three kinds of property, as mentioned in the subsequent text, must be made with reference to the consent of others.

The *Retnācāra*.

THE meaning is, that the terms of the text denote, that the assent of another, as well as the assent of the giver, is required.

MISRA explains "property inherited from ancestors," immoveable property which has not been divided. Consequently, the immoveable patrimony, received by brethren in right of their connexion *or affinity* as sons or the like, may not, so long as it remain undivided, be given by one son without the assent of the rest : the commentator does not consider gift as forbidden, when there are no brothers who are coparceners and there are brothers and sons with whom partition has been made. If it be asked, whence *the limitation of "immoveable"* is obtained, *the answer is*, from the text of VYĀSA (Chap. II, v. VI). If it be *again* asked, whence *the limitation of "undivided"* is obtained, *the answer is*, from the text of NĀREDA (VI). Therefore MISRA does not say, that a father may not give *any thing* without the assent of his sons : as we shall hereafter show.

"Do not subsist" (XVIII 3) denotes the nonentity of every gift (*that is, some do, and some do not, subsist*) ; such is MISRA's meaning : and in the subsequent text (XIX 4) it is declared, that if those three respectively (what is acquired by marriage &c.) be given with the assent of the wife, of the coheirs, or of the king, respectively, the gift has validity : for it is a rule, that things named in order, should be referred respectively to the terms placed in similar order ; as in the example, he cuts a *D'baṇa*, and a *C'badira* tree, with a bill, and an axe.

"ACQUIRED by marriage ;" what is received at nuptials, on obtaining a bride. There the rule bears, that the assent of the wife is required, when the property is given away by the husband ; not, when it is employed in procuring raiment or the like for consumption : since that would be a moral construction of law. Civil law is founded on reason not on revelation *only* ; for it may rest on another possible foundation ; accordingly VRĪHASPATI directs, that decisions shall be made according to the reason of the law (XVII).

MISRA.

HERE the expression, "at nuptials," is employed comprehensively ; for the rule bears, that even what is afterwards given with a declaration, "this is bestowed on thee, that my daughter may be maintained with it," should not be given away by the husband, without the assent of his wife. What is given  
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with a declaration of its uses for the maintenance of the wife, becomes the property of the husband concurrently with her; therefore it is fit, that the gift should be made with her consent. In other cases his property is independent of her: what should prevent a gift without reference to her consent?

If it be said, the husband's gift is in no case proper without the assent of the wife, because the text, "property is common to the husband and wife," shows her title in the whole of his wealth; and should not be otherwise explained, without an objection *existing to its literal interpretation*; that is denied, because the wife's property must be inferior, as it is subordinate to the husband's; and the right, of persons living under the control of others, cannot prevent the divesting of property appertaining to the persons under whom they live.

MAY not the wife's title subsist, although the thing be given away; for her property is not divested? It should not be answered, the wife's property, being dependent on the husband's, should be considered as annulled when his title is transferred. Were it so, his right being divested by his death, and the property vested in the sons, their mother would not be entitled to a share, in right of her former property, when they afterwards make a partition. *To this it is replied*, that the difficulty is removed by saying, the mother's title to a share is not founded on her former property, but on positive texts; and if it be wished to interpret the text according to the reason of the law, the vesting and divesting of the property cannot be established without *the support of an express ordinance*: but, under the authority of the text, and by the force of the possessor's will to make a gift, the divesting of the husband's property is accompanied by a transfer of the wife's. However the divesting of his property by death or degradation is excluded from this consideration. Thus must the law be interpreted.

ACCORDING to the opinion of JĪMUTA-VĀHANA and others (who contend that the wife is not entitled to the estate of her husband who leaves no male issue,) food and raiment must necessarily be given to her, although

quoted); the *Smṛiti*, which is founded on the reason of the law, relates to visible effects, grounded on authority, other than *moral* precepts, but deducible from reasoning: but, where the reason of the law does not appear, there, as the authority of it must of course be sought, effects are supposed, which proceed from the *Vēda* alone, an authority independent of life; and such effects, in some instances pure, in others sinful, are unseen or *metaphysical*. If this text imply immorality, a difficulty would arise from the additional necessity of establishing an unseen or *moral cause*, contrary to the immorality declared to arise from those ill actions, and independent of the declared effects of the moral cause mentioned. Such is the sense of MISRA's remark. The unseen or *moral consequences* of irregular conduct are declared: by discriminating the degree of irregularity, crimes of several degrees result from one general expression; penance must be performed accordingly, and punishment must be proportioned to penance: but, in this text, reasoning, not morality, is shown. Such is MISRA's meaning: to expatiate would be superfluous.

· SHOULD not scripture be established as the foundation of the system of law, declaring it to be founded on scripture; but not independent of reason? Reasoning is not obviously denoted by the text; therefore he says, civil law is founded on reason: but rules concerning lunar days, and the like, are absolutely founded on scripture. How then is law called *Smṛiti*? Sounds, which were heard from the utterance of the supreme being, are called *Śruti*; they are the *Vēdas*; and these names are interchangeable. Words, which were delivered by holy sages from recollection of the sense, after forgetting the words revealed by the supreme being, or even while remembering them, are called *Smṛiti*. If recollection of the sense of the *Vēdas* be not admitted as its foundation, how can it be called *Smṛiti*? The answer is, reason is not the *sole* foundation of civil law; but scripture also, in some instances: accordingly a text of scripture concerning partition during the father's lifetime, is adduced by the holy sage BAUDOHĀYANA. But MISRA has said, "it is founded on reason" because reasoning abounds. In the law concerning lunar days and the like, scripture abounds; and reasoning is only sometimes employed. Again; property is a thing founded on scripture; for, without it the vesting and divesting of property could not be proved: hence, the conveyance



her husband's brothers succeed to the whole estate: that alone is her right, but she cannot claim partition with his brothers; for no ordinance *has authorized it*: and, since women are dependent on men, surely their property must be so likewise.

SINCE the husband's wealth is common to him and his wife, it is joint-property; and if it be given away by the husband, her share *nevertheless* subsists, as in the case of joint-property belonging to two brothers. This *again* is denied; *for in practice* that is considered as joint-property, in which there is equal right on both sides. Hence, even those, who contend for the equal dominion of a father and son over an estate inherited from the paternal grandfather, do not affirm, that the son's share in it subsists, if it be given away by the father alone; for he has not joint-ownership with the father. The term is derived from equality: but that estate does not equally belong to the father and son; for one is superiour. The expression, "equal dominion," is vague, intended to prevent the father acting *solely* at *his own* pleasure in the partition of the heritage: it is founded on connexion by birth, which common sense does not make equal: and it must be established, that the son's claim in right of affinity is included in the father's. Admitting with JĪMUTA-VĀHANA dispersed property, *still* the son's right must be considered as the same with the father's, being referred to the same quarter. Hence in a partition made by the father, no share is given to a grandson, whose *own* father is living.

THERE is no dispute on the opinion of those, who hold that the text, which declares wealth common to the husband and wife, implies only the expenditure of his property in honouring guests, not a right vested in her. But it is irregular to interpret a text otherwise, without unfitness *in its literal sense*: and we hold it proper, that the wife's co-operation should be required in civil contracts, as in religious acts; under the text, "The wife is declared to be half the body of her husband, equally sharing the fruit of pure and impure acts" (Book V, v. CCCXCIX); and again, "Then only is a man perfect, when he consists of *three persons united*, his wife, himself, and his son" (Book V, v. CCLII 4).

"For that would be a moral construction of law" (gloss of MĪSRA above quoted);

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SHOULD not scripture be established as the foundation of the system of law, declaring it to be founded on scripture; but not independent of reason? Reasoning is not obviously denoted by the text; therefore he says, civil law is founded on reason: but rules concerning lunar days, and the like, are absolutely founded on scripture. How then is law called *Smṛiti*? Sounds, which were heard from the utterance of the supreme being, are called *Śruti*; they are the *Vēdas*; and these names are interchangeable. Words, which were delivered by holy sages from recollection of the sense, after forgetting the words revealed by the supreme being, or even while remembering them, are called *Smṛiti*. If recollection of the sense of the *Vēdas* be not admitted as its foundation, how can it be called *Smṛiti*? The answer is, reason is not the *sole* foundation of civil law; but scripture also, in some instances: accordingly a text of scripture concerning partition during the father's lifetime, is adduced by the holy sage BAUDO'HA'YANA. But MISRA has said, "it is founded on reason" because reasoning abounds. In the law concerning lunar days and the like, scripture abounds; and reasoning is only sometimes employed. Again; property is a thing founded on scripture; for, without it the vesting and divesting of property could not be proved: hence, the conveyance

ance and transfer of it being proved from the scripture generally, it has been established by sages, from the reason of the law, that effects bailed cannot be given away, that joint-property is unalienable without the assent of the other proprietors, and that several property may be aliened at the sole pleasure of the owner, and so forth.

“ For law may rest on another possible foundation ” (gloss of MISRA above quoted) since the words of holy sages are words of living *men*, they have not authority of themselves it is true in reasoning, that one alone has authority in the universe, HE, BY WHOSE WILL THE UNIVERSE IS GOVERNED But it does not follow, that the words of sages have no cogency, for they are void of deception and other faults Hence the words of sages, not cogent in themselves, nor yet destitute of authority, derive it from another *source* It is not proper to affirm, this source to be the sage's eye, ear, or other organ of sense. Property and the like, which are things invisible, future, and remote, cannot be apprehended by the eye, ear, or other organ of sense Nor should it be said, that sages see every thing with the eye of absorbed contemplation, for it cannot be admitted, that any other, than GOD, sees all things. It should therefore be affirmed, that the system of law has been propounded by legislators viewing the sense of the *Vedas* else, there can be no other radical authority for the words of sages A knowledge of the sense of the *Vedas* being established as the foundation of the whole system of law, wherever a *particular* rule may be grounded on a sense deducible from the reason of the law, there another authority may exist, and it is not actually founded on the knowledge of the meaning of the *Vedas*. This should be established as the implied sense of the term “ rest on ” or be caused “ a decision must not be made solely by having recourse to the letter of written codes ” (XVIII), if it cannot be made in conformity both with the reason of the law and the letter of written codes, the decision should be made according to the reason of the law alone

WHAT is received from the maternal grandfather, must not be considered as having descended from ancestors, but as acquired by the man himself.

“ BE given with the assent of the wife &c.” (XVIII 4). The gift should not be made without her consent. Is not that, which must be given with the assent of the wife, and which has been previously described by the term, “ acquired by marriage,” the exclusive property of the woman, and no wife appertaining to her husband? therefore, the husband having no power to give it away, what purpose is there in her assent?

## XXIX.

VYA'SA:—WHAT shall be given *to a bride* at the time of her nuptials, with a declaration *of its use, made by the giver*, to the bridegroom, shall be her entire property, and shall not be shared by her kindred.

THOUGH it be the exclusive property of the woman, still the gift, *made* with her assent, is valid; for it is authorized by the owner: and this is implied by the expression, “ with the assent of the wife, of the coheirs, or of the king.” *To this it is answered*, were it so, it would be superfluous *to declare*, that what is acquired by marriage, *may be given* with the assent of the wife; for, in all cases, a gift made with the assent of the owner is valid.

IN the text of VYA'SA, bridegroom, in the dative, necessarily implies that he is the donee; that property is the bridegroom's, not the bride's: by declaring it her entire property, it is understood, that she has an interest in it, which implies, that a gift must be attended with her consent. This is denied; for another authentick text, quoted by JI'MU'TA-VA'HANA, shows, that the *legal* heirs of her exclusive property succeed thereto.

## XXX.

VYA'SA\*: — WHAT, *indeed*, shall be given *at any time* to the husband in trust for *his wife*, the daughter of the giver shall enure to her use, whether her lord live or die; and, on her death, to the use of her issue.

HENCE, JI'MU'TA-VA'HANA makes it evident, that it is the bride's property.

perty It intends what is given to the bridegroom, with a declaration, " this shall be the bride's " not *what is given* without this declaration. " At the time of her nuptials " is mentioned illustratively, it is not a *requisite* condition, since the declaration of *its use* is the cause of *its becoming female property*. Therefore such a gift belongs exclusively to the woman but the construction of law, as delivered by MISRA, that " even what is received by an independent bridegroom, at the time of the nuptials, without such a declaration, may not be given without the assent of the wife," is incongruous. To this it is replied, what is given with a declaration, " this shall be the bride's," is her exclusive property, but in that, which is given to the bridegroom with a declaration, " it is my intention, that the bride's maintenance should be *secured* by this," the bridegroom has ownership, but with reference to the *consent of his* wife This is intended by MISRA, and consequently there is no inconsistency

BUT, if a declaration be made *in these words*, " this shall be the bride's," her husband is not the donee, and he should not be named in the dative It must not be argued, that the dative case denotes the agent's object, as in the example, " she sleeps with her husband " The object, *or intention*, " this shall be the bride's," has no relation to the bridegroom SRI CRISHNA-TERCA'LANCA'RA explains " what is given to the bridegroom," what is delivered into his hands But others explain " declaration," a notification that " it shall be the bride's property " consequently the gift is made to the bridegroom, but contemplates the property of the bride; and where the design of the gift is, that the property shall be the husband's in trust for his wife, it becomes her property, through the medium of his, and belongs exclusively to her by the authority of the text.

IN fact, the gift of every sort of property acquired by marriage, must, under this text, be made with a *precisus* reference to the wife,\* as the assent of the king is required for a gift of arms, horses, elephants and the like, conquered in war and it may be affirmed, that the rule is assumed from the reason of the law grounded on the wife's interest in the cha The  
jullness of one opinion, (MISRA's, or the should be thor 12-  
mined.

WITH the assent " of the coheirs" (XVIII 4) ; meaning undivided brethren and the rest.

MISRA.

" OF the king" (XVIII 4). He, in whose army a man combats, is the *king or lord* : in giving wealth gained by valour, his assent is required. VA'CHESPATI-MISRA notices a distinction : the king's consent is required for a gift of arms, horses, elephants, and the like, gained by valour, or by victory in battle ; for his ownership is supposed : but *it is not required for a gift of clothes or the like* ; for they are supposed to devolve on the conqueror's men. Others hold, that in regard to the surrender of his cities by the conquered king, and in regard to horses and the like seized by the enemy and given by the victorious prince, the concurrence of the conquered king is required. VA'CHESPATI-MISRA does not accede to this last opinion ; for he has not explained this contradiction.

" THE gift has validity" (XVIII 4) : but not without the assent of the wife, of the coheirs, or of the king.

" HEIRS, *whether they be divided or undivided &c* ;" brethren and others of right receiving the heritage of him, whose inheritance they take. MISRA states the import of the term " divided ;" although heirs have made a partition, their shares, if not separated, remain in common, and are consequently joint-property. In that case a single partener has no power to give, pledge, or sell the whole. But, if all the effects be separate, the act of a person, who is his own master, is valid. In effect this relates to cases, where no partition *has been made*. It must be noticed, that, since those *shares* appear virtually to be held in common, the sense of the text shows that joint-property may not be given. CHANDÉ'SWARA, from the derivation of the term (*dāyam ādatté*, takes the heritage), explains *dāyāda* or *Leir*, a son or the like (as the *Calpateru*, in a gloss on the text of APASTAMBA expresses, " heir, son or the like ;" and the author of the *Pratīśa* also explains the term in the singular number). Consequently he concurs with MISRA : thus " heir" signifies " son ;" to the question, " whose sons ?" the answer is, " his, from whom the estate has descended ;" hence the brothers of the donee

are

are virtually suggested by the terms of the text. Consequently all the sons of the original proprietor are equal owners, hence no one has power to give away the joint-property he has not the independent power requisite to the validity of his act. VA'CHESPATI-MISRA states this opinion of CHANDE'SWARA in these words "others hold, that the term heir chiefly intends "son, while the father lives, even a separated son has not power over the "immoveable estate but what he has acquired by the acceptance of gifts, "and the rest of the seven modes of acquisition, he may give away." Consequently, while the father remains, sons, with whom no partition has been made, have not power over the immoveable estate, and while he lives, they are not uncontrolled in receiving, aliening, and dissipating property. The texts have the same foundation but in that text the dependence of undivided heirs, in regard even to moveable effects, is further denoted, and it shows, that separated sons have not power over immoveable property

SOME expound the phrase, "heirs or sons have a lien equally" (XVIII 5), they are owners equally with their father accordingly it appears from the text of Y'JNYAWALCYA (XIII), that the father has not power to give away immoveable property without the assent of his sons, and that is actually declared by the legislator (XIV) and this text, they hold, to have the same import

CONCISELY the settled rule is this. joint-property, which has descended from ancestors, can only be given away with the consent of the other parceners, divided moveables may be aliened at the owner's pleasure, but immoveables, with the consent of those, who were parceners before partition in the case of wealth acquired by marriage, the assent of the wife is requisite, of other property, acquired by a man himself, a gift may be made at his own pleasure Such is the opinion of CHANDE'SWARA and also of VA'CHESPATI-MISRA but the assent of the wife is only required for what has been given to the bridegroom with a declaration "let this be the bride's," and not in every instance of property acquired by man and there is this difference, according to the latter the assent of the brethren is not required for a gift of divided property. In the former opinion there is also this difference, the assent of the wife is not required for a gift of immoveable property. In the latter opinion the assent of the wife is not required for a gift of immoveable property.

ancestors must *only* be given with the assent of sons ; and so must immoveable property acquired by a man himself.

CHANDÉSWARA has not clearly explained, that, if the ordinance be infringed, the gift is void. In the want of an able exposition on the words " the gift has validity," (XVIII 4), it is inferred, that the gift is not valid *in other cases*. It is the opinion of VA'CHESPATI MISRA, that the gift is void ; for in a gloss on "divided or undivided" (XVIII 4) he states, "but after partition, a gift made by an independent person is valid ' "

JÍMU'TA-VA'HANA says, " a gift made by the owner, not disqualified by " infancy or the like, is in no case void, the gift is valid to the amount of " his own share even of landed property." The wife's gift of property belonging to the husband, to whom she is united, has not been considered by any modern author the discussion of *this point* may be seen in book the fifth on inheritance.

THE text, " at his pleasure he may give what himself acquired ' (XVIII 3), is not restricted to property other than immoveables but it applies to whatever *the owner* himself acquired, whether moveable or immoveable ; for there is no authority for any restriction. Such is CHANDÉSWARA'S opinion : *but it may be objected, that a limitation might be deduced from the text* cited by JÍMU'TA-VA'HANA and others (XIV).

DECLARING valid the gift of property acquired by a man himself, or inherited from his father (XVIII 2), the sage declares the moral purity of gift, " at his pleasure he may give &c " (XVIII 3). Consequently there is no reference to the assent of any person, and a gift actually made is morally pure. But of property acquired by marriage, or inherited from ancestors and not divided, the whole ought not to be aliened. Such is the sense of *the text* (XIX 3). For, the bride having ownership in what is given with a declaration of her property, the bridegroom is not independent in regard to it but, if it be given with a declaration only of its use for her maintenance, a gift *of such property* made by the husband is valid. For this purpose it is said, not every gift subsists, *or the whole ought not to be aliened* (XVIII 3). In re-



ward to what has descended from an ancestor and is undivided, a gift of the whole made by one parcener is not valid, but the gift of his own share is good in law. The sage declares the form of validity in gifts (XVIII 4). the whole property acquired by marriage, or inherited from an ancestor, given with the assent of the wife, or of all the coheirs, is a valid gift since the king's favour concurs to the ownership of property acquired by valour, even a trifle given without his consent is not a valid gift, for without his consent the occupier has no independence. Such is the sense of the text and that is proper, because the king maintains the army for the sake of victory in war, hence what is conquered by the troops, of right belongs to the king; else, the ownership of territory conquered by his forces would be shared. Or what distinction is there in respect to clothes, horses and elephants, territory, and the like? As to what is gained by desperate valour, as well as by valour *generally* (Book V, v CCCLX), even there it appears, that the king's assent is requisite to enjoyment, to gift, and the like. But the king, any how informed, gives immediate mental assent instances of *formal* consent are not much seen in practice.

In regard to immoveable property inherited from an ancestor, the assent of brothers and the rest, who, though separated, may ultimately be entitled to a partition of it, is the cause of moral purity by the gift but the donation is not void without their assent, for that is not denoted by the text. As to the inference, that the gift is void, because disability is denoted by the expression, "has no power" (XVIII 5), it is inadmissible, for the disability may be otherwise effected thus, when an heir, though divided, *forbids* the gift or sale of immoveable property inherited from an ancestor, the occupier cannot give it in contempt of that prohibition. Such is the sense of the words, "has no power," and practice also conforms therewith.

A GIFT of immoveable property, made by a father without the assent of his sons, is valid, but he should be amerced, and must perform penance. For their equal dominion is propounded under the title of inheritance.

## XXXI.

YA'JNYAWALCYA:—OVER land a \ by the gr

over a corrody out of mines or the like, settled on him and his heirs by the king, and over slaves employed in his husbandry, the father and the son, when the grandfather dies, have equal dominion.\*

AND that is pertinent as it relates to inheritance; else, sons could not have ownership while the father lives: but to affirm, that the right is similar, would be mere childish prate. At present, the title becomes similar after partition, as is shown in book the fifth on inheritance; and the texts of VISHNU and others confirm it: but a gift by a father under the impulse of anger, or the like, is not valid. Such is the modern opinion: no one has expressly said, that the immoveable patrimony, given without the assent of sons and the rest, is not a valid gift. Even the king should not, in breach of the law, give immoveable property for civil purposes; but he may give land or the like for religious uses: so may any other owner give away his own property for such uses; it is not proper, in this instance, to discriminate moveable and immoveable property: the family, however, should not be distressed, as appears from a text cited by JÍMU'TA-VA'HANA (XI).

FROM the rule, that 'evil is not the consequence of an act producing good, and consistent with the *Védas*, provided the act be different from incantations to destroy enemies and the like', some infer, that sin is the consequence of a gift of property, when there was no excess above the necessary subsistence of the family (*this being comprehended in that vague exception*); hence the rule of decision in this instance is similar to that which regulates gifts for civil purposes: but those, who are able speedily to acquire wealth, perform the costly sacrifice *Vísvajit* † or the like.

### XXXII.

YA'JNYAWALCYA:—LET the acceptance be publick, especially of immoveable property: and delivering what may be given and has been promised, let not a wife man resume the donation.

\* Book V, v. XCII.

† MANU, Chapter XI, v. 75.

“PUBLICK;”

“ PUBLICK, ’ in the presence of witnesses; let him so act, that he may not afterwards say, “ this was not given by me, but intrusted for use.”

“ ESPECIALLY of immovable property ” a gift of land, without the assent of sons and the rest, is not consonant to duty therefore arbitrators may think it has the appearance of a *contract* not made • kinsmen, even though divided, may litigate, and absolute property is ascertained by possession for twice the period which confirms a *right* to moveable effects. these and many other obstacles exist in regard to land, it is therefore said, “ especially *the acceptance* of immovable property.”

A WRITTEN contract of gift is proper, in the want of that, the donation should be attested The contract should be written with the donor’s own hand, and, in these times, it should be witnessed else, a litigant, averring that it was obtained by compulsion, may render the writing vain The witness should be a kinsman, a publick officer, or other principal person, for an authentick text declares,

### XXXIII

LAND IS conveyed by six formalities, by the assent of townsmen, of kindred, of neighbours, and of heirs, and by the delivery of gold, and of water.

LITERALLY “ of the town,” meaning the rational inhabitants of the place. “ Kindred,” persons who might eventually be entitled to the heritage after the giver’s male issue, namely, daughter’s sons and the rest “ The lord,” the king, or his substitute, or any king’s officer employed for the purpose “ Heirs,” sons and the rest *Land is conveyed* with the assent of these, that is, with their acknowledgement of knowing the gift, or with their attestation But the author of the *Mitacß ara* says, the gift should be made after they have assented by “ town,” according to him, is meant the king’s officer residing in the town his assent is required to ascertain the boundary, else, the gift may be either void or immoral, (*according to the difference of opinion on that point.*) because it may include the joint-property of others By “ kindred,” according to him, are meant brothers and the rest without their

their assent, a gift is defective, as already shown. By, "lord" is meant the king; his assent is required because subjects are dependent (XV 2): in a gift of land, the assent of him, by whose will it is held, and by whose favour the encroachments of others are prevented, is indeed proper. By "heirs" are meant sons; their assent is required by the text cited in the preceding section (XIV). "A delivery of gold" with land, for the purpose of showing a complete gift, is proof of donation. "Water" is delivered with *tila* and *cusā*, for the auspiciousness of the gift. And thus, a donation of immoveable property for religious uses is excellent; but, for civil purposes, a gift of immoveable property should not be made by prudent men: this is a settled rule.

By proceeding so far, great difficulty would arise in gifts of landed property for civil purposes. But, when the townsmen and the rest are witnesses to the contract, there is no controversy. If, by accident, they be not witnesses, their assent should be noticed in the deed of gift: and the written contract should be made in the same form, with a written contract of loan; for the directions of YAJÑYAWALKYA are general (Book I, v. XVI).

THE form of the writing should be this: in place of the creditor's name, let the donee's be written, and the names of his father and so forth, to prevent a mistake of the person; next should be written, "this deed of gift, *as follows*: for the sake of heaven I give unto thee, with gold and water, this land, measuring so much, and exceeding the *necessary* subsistence of my family, *to be held* for such a period." If the townsmen and the rest be not witnesses to the deed, or if they be not present, the instrument should express, "with the approbation of the king, and with the assent of sons," and so forth. Though the consent of sons be not required in a gift for religious purposes, it should nevertheless be noticed, (on account of the difficult publicity of a gift of immoveable property, which has been remarked by sages,) that himself and his descendants may not claim ownership. The year, month, fortnight, and day should be noted; and the donor should subscribe his name with his own hand, first writing the designation of his father and so forth. The names of witnesses, informed of the whole contents, may be subscribed by another hand after asking *their permission*; but the writer's name *must be added*. If any party

be unable to write, *the instrument* should be subscribed by a substitute : but the donor, if unable to write, makes some mark, as a double line, or the like. Such is the practice.

A CONTRACT written by the party himself, even though not attested, is *good evidence*: but, if attested, it is indisputable ; and therefore it is proper to make it *in that form*. But if there be not the attestation of kinsmen and the rest, then it must certainly be questioned by the king. Such should be the written contract of gift for the whole of joint-property: in grants by a king there is some difference.

#### XXXIV.

YA'JNYAWALCYA :—LET a king, having given land or assigned a corrody, cause his gift to be written, for the information of good princes, who will succeed him,

2. Either on prepared silk, or on a plate of copper, sealed above with his own signet. Having described his ancestors and himself,
3. The quantity of the gift, with the penalty of resumption, and set his own hand to it, and specified the time, let him render his donation firm.

“A CORRODY ;” the gift of a thing assigned on a fund. “ For the information of good and just princes ;” not of unjust princes, for they indeed violate even written grants. How should the writing be framed ? He says “ on prepared silk,” or (because that is not durable) “ on a plate of copper.” “ The gift ;” the land or thing which is granted. *Having described the quantity of it ;* “ its quantity so much.” Declaring the consequence of resuming a gift. Setting his own hand to it ; “ what is here written has the assent of me, son of such a one :” with such words subscribed, and with the date affixed ; that is, the date of his reign, or the time of an eclipse of the moon or the like. By the assent of the king the donation should be rendered firm.

THE consequence of resuming a gift is thus shown ;

### XXXV.

*Adi purána* : — THE giver of land remains in heaven sixty thousand years ; but he, who resumes it, or assents to the resumption, shall so long inhabit a region of torment.

IN the *Dipacalica*, a corrody is thus explained : the gift of a future thing by a previous agreement, in this form, “ I will give a hundred *suvernas* every month of *Cárticà*,” or, “ out of this mine, or this village, I will annually give a hundred *suvernas*,” or “ I will monthly give one *suverna*.”

How can there be property in a future thing ; for it has not, at that time, a place on which to rest ; and the act of volition ceases after creating the right. Neither is it true, that a future thing is not given, but only promised : were it so, after the death of that king, on the accession of his successor, the corrody would be lost. Nor should this be deemed admissible ; for it is inconsistent with the practice of respectable men. To this it is replied, that the past existence of volition is the cause of this property : hence the *Bráhma* has a right to the future thing ; and, should another king resume the grant, he falls to a region of torment for seizing holy property. The gift of a corrody is at once completed ; but it should be inserted in the written grant, “ I will give a hundred *suvernas* every *Cárticà*.”

IF property is not created in a future thing, why is the partition of a corrody discussed ? The word itself justifies its futurity and implies volition ; and the term “ gift,” is extended to corrody, for the purpose of confirming it, like the sale or transfer of a debt. The grant of the pension should be prefaced with these words ; “ this written grant of a corrody.”

“ FOR the information of good princes :” else, a prince, though good, might resume it through ignorance or doubt ; a bad prince would probably, resume it knowingly. To denote this, the epithet good is added. This is meant generally. A consequence of the grant is the spreading of the donor's fame :

fame: accordingly, an authentick text, cited by GO'YI'CHANDRA, expresses.

### XXXVI.

So long as his fame, unforgotten, pervade the earth and air, shall the generous man remain in a celestial abode.

IT is related in the *Mahábhárata*, that, having performed many virtuous acts, and enjoyed heaven during a very long period, the king INDRADYUMNA, falling *from heaven* when almost all his contemporaries were dead, though *the merits of his virtuous deeds* were yet unexhausted, asked of the sage MARCANDE'YA the story of his fame; but he, though he had lived long, being unable to relate it, referred him to one born before himself; that person, also unable to relate the story, did the same: this series of reference being continued, a turtle, in the lake of the DA'NAVAS, rehearsed the whole history of INDRADYUMNA. By this his fame, before extinguished, again blazed, and by its own effulgence caused the king INDRADYUMNA to reascend to heaven.

As prepared silk is not very durable, a plate of copper is directed. According to the thing to be given, a particular leaf or plate, may be used. Copper is here mentioned for its purity and auspiciousness: this is meant generally, comprehending silver and the like.

“ HIS own signet:” a thing used to stamp, at once, the whole of the letters, in a uniform mode; the letters may be those, which express his name, or others; but such, as cannot be used by another person.

“ HIS ancestors:” the race from which he sprung; his own ancestors born of that race: for the purpose of spreading their fame with his own, and to prevent the mistake of another person bearing the same appellation.

“ HIMSELF:” since it is customary to insert the name of the donee and the rest, and since his own appellation is actually inserted from the necessity of observing

observing the form of a written contract of debt, or is inserted, because it is engraved on the seal, something more must be *here* meant; and that appears to be his own titles of honour: though it be improper to exalt and celebrate himself, such praise is not improper from his own dependents. Thus some explain the text; but others hold, that, since he is dignified by spiritual persons with titles of honour, it is proper to insert them.

“ DESCRIBING the quantity” of land, in this form, “ land measuring so many cubits.” In fact its description by time and place should be inserted; however, that is not shown in the text of YA’JNYAWALCYA (XXXIV), but is *inferred* from practice: it is usual to insert the *name of the town* and the like.

“ THE penalty of resumption:” the consequence of resuming what has been given, as has been mentioned; and another authentick text, *cited* in the *Dīpācalicā* denounces the penalty.

### XXXVII.

BUT he, who seizes the subsistence of priests, whether given by himself or by another, is born a reptile in ordure for sixty thousand years.

IT is shown by texts cited in the *Ecādēśi tatwa* (XXXVIII and XXXIX) that a man seizing holy property is guilty of a *crime equal* to the murder of, a priest; and, seizing the property of a *Cṣbatriya* and the rest, *he is guilty of a crime equal* to the murder of a foldier and so forth.

### XXXVIII.

*Vāyu purāna*:—SINCE property is called external life, he, who takes it, slays the owner.

### XXXIX.

SANC’HA:—HE, who resumes the subsistence, of any man, of what tribe soever, must perform the expiation prescribed <sup>for</sup> killing a person of that tribe.



## XL.

HARITA:—HE, who gives not what he has promised, and he, who takes back what he has given, sinks to various regions of torment, and springs again to birth from the womb of some brute animal.

THESE, and many other consequences from resumption of gift have been propounded ; for the sake of illustration, a little has been inserted *in this place*. Many fruits, *accruing* from the gift of land, have also been mentioned by sages.

## XLI.

BUT he, who accepts land, and he, who bestows it, performs pure acts, and shall certainly go to a region of bliss.

AND "the giver of the land obtains landed property,"\* and so forth; but that is not mentioned by YA'JNYAWALKYA.

As the direction, for the king's subscribing the grant with his own hand, may be fulfilled in any words, some explain it, that he should only write with his own hand, "so much land given to such a person." They think it ill reasoned to *require* the words, "this deed of gift," as practised by his officers.

"THE date:" 'his own' is brought forward ; consequently the sense is, the king should execute the deed of gift dated by the year described from the reigns of princes of the same dynasty. His titles, and the denunciation against the resumption of gift, *should* be placed above, and on the left side; for it is customary to put the name of the giver on the right side. Let him render his donation firm, that it may have long duration. Thus some explain the text (XXXIV).

A DEED of gift, or the grant of a corrody, should be thus framed in the

form directed for a written contract of debt ; it is separately mentioned for the additional direction of a seal and the like. This gloss is grounded on the *Dīpachāṭa*.

SINCE the priest, as well as the king, has property in the soil occupied by the subject, (for he is declared by MENU to have dominion over the human species, Chapter II, v. XXIV), and since the priest's lordship of the soil is proved by the practice delivered in the system of law (Chapter II, v. XIII), and since MENU declares it (XLII), and since the priest is entitled to a share in the produce of agriculture (XLIII), how is it again bestowed on him ?

#### XLII.

MENU:—THE *Brāhmana* eats but his own food ; wears but his own apparel ; and bestows but his own in alms : through the benevolence of the *Brāhmana*, indeed, other mortals enjoy life.

#### XLIII.

PARA'S'ARA:—GIVING a sixth part to the king, a twenty-first to deities, and a thirtieth to priests, a husbandman is exempt from all sins incident to agriculture.

To the question above stated it is answered, that dominion is expressed in a general sense ; as a priest is not qualified for war, he has not superiour ownership : and even admitting the priest's lordship of the soil, a gift may be nevertheless made to him for the purpose of entitling him also to receive the share due as revenue to the king.

MENU forbids the levying of revenue from a field occupied by a priest ; for otherwise the text, quoted in Chapter II (v. XIV 7), would be unmeaning. But subjects, even though residing in land appertaining to a priest, must be protected by the king ; and the fines imposed on them should be received by the sovereign.

· If some river be described as the boundary, and the quantity of land be specified, then, should the river encroach on it, the loss falls on the priest, because his land is destroyed; as it is his loss, if gold received by him be stolen by robbers. But if the river, assigned as the boundary, should recede, the land gained by alluvion belongs to the king; because the gift did not intend that land, and it exceeds the quantity *specified*. But where the quantity is not specified, and the grant expresses, “the land as far as the river is thine; what is carried away by the river is thy loss; what is left by the river is thy gain;” then the loss or the gain, *whichever it be*, is the priest’s.

It must be considered, that, if present volition, by its privation, \* become the cause of future property in a future thing, present volition, by its privation, may also become the cause of future property in a present thing: as in the case of a gift, in this or other form, “this field, belonging to me, shall be thine after my death,” the act of volition, which constitutes gift, is past at that very time. The increase of purity, *attainable by gift*, is *gained on that day which is hallowed by the donation*: but the property of the giver is not divested; nor is it vested in the donee, until after the giver’s demise. His donation is indisputable, because it does not differ from relinquishment vesting property in another, after divesting his own property. It should not be objected, that the past existence of volition is not seen to be a cause of property. It is necessary to establish it in the case of corrody; and authors admit the gift of a future thing.

WHEN a debtor pays the debt, which he has contracted, by *assigning* some thing which will exist on a subsequent day, then, the debt being acquitted on that very day, interest ceases; and that future thing becomes the property of the creditor, and cannot be taken by another. A debtor, desiring to conciliate the regard of his creditor, may voluntarily add, and give, a quarter, or half of that, and so forth, to a creditor eager for interest. In this case the form of the writing *must be regulated accordingly*: if YAJNYADATTĀ, having borrowed ten *suvernas* from DEVADATTĀ, on the tenth day of *Āshāṣṭha*, discharge *the sum* on the eleventh day with an *advance* of a quarter,

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\* Alluding to the relation between cause and effects.

the form of the writing is this, "I, having received a loan from thee, on the tenth day of *Ashādha*, (to discharge that together with interest voluntarily stipulated and amounting to a fourth part of the principal for a single day) do give unto thee grain to the value of twelve *suvernas* and a half, at the current price of the month of *Pausha*, to be received from the produce of this field in the present year." If the produce of several years be assigned, it should be thus stated, "from the produce of this field, for so many years." But if the writing bear, "for the present year," and grain be not produced that season, the amount should again be made a debt; for it is not in fact discharged: the will to transfer property has alone past, but the creditor has obtained none; therefore the debt must be again paid. Where a debtor, intending to pay the debt when due, has carried the sum from his own house, with the will that it should become the creditor's property, but in the mean time the money is lost by accident, as in this case it must be paid again; so, in the other case like-wife. For there is equally a want of delivery; and according to VĀCHESPATI BHATTĀCHĀRYA, there is an equal want of property. The payment is complete on actual delivery; not on a mental relinquishment only.

If he receive a loan from another, pledging to him the produce of that field, then the last creditor shall have the surplus produce; he does not in this case take a share. If there be no surplus, the debt is similar to one unsecured by a pledge; and the last creditor shall be paid from other assets; for he has no pawn. But, if the prior contract were an hypothecation, then, according to RAGHUNANDANA, the first creditor must obtain his principal and interest by any other mode whatsoever, and relinquish the pledge: according to other opinions, the last creditor only shall take the produce; but the first creditor shall receive interest, from the date of the second contract, at the rate of two in the hundred, or the like; for his pledge was lost to him on that date. This, and other points may be determined from a man's own judgment.

CA'TYA'YANA declares, with a distinction, what has been said by YĀJNYAWALKYA, that what has been promised, should be given (XVI).

#### XLIV.

CA'TYA'YANA:—HE, who delivers not a present which he has  
Z z z pro-

promised to a priest, shall be compelled to pay it as a debt, and incurs the first amercement.

By this expression, "as a debt," even beating and the like are permitted; but it is incompatible with common sense, that the claimant should beat debtors of the sacerdotal class: it appears therefore, that the king should employ *compulsory* means for the recovery of the debt. In fact he may compel payment by mild remonstrance and the like: it is mentioned to show the absolute necessity of payment. Prudent men do not make *absolute* promises; but, intending to give any thing, they say, "God willing, the purpose shall be accomplished."

From the mention of a priest in this text, some lawyers doubt, whether it relate not to the promise of a gift for religious uses. But that is not right; for, in the case of a promise for civil purposes, the delivery of the gift is also necessary. It has been declared, that, in the case of a promise for such purposes, what has been promised is unalienable (IV 2).

#### XLV.

*Matsya purána*—If a man give not what he has *legally* promised, let the king fine him one *suverna*, or eighty *raśikas* of gold.

THE contradiction, between the fine of one *suverna* and the first amercement (XLV and XLIV), should be reconciled by distinguishing the case according to the virtuous or vicious disposition of the party.

YA'JNYAWALKYA has said, "let not a wife man resume the gift" (XXXII); there resumption is of two kinds, refusing to deliver what has been given, and taking it back after delivery; the fine is the same, for they are *like* a pair of horses coupled in one yoke: and no other fine has been mentioned. HA'RÍTA declares the offence equal (XL and XLVI).

#### XLVI.

HA'RÍTA:—A PROMISE *legally* made in words, but not performed

formed in deed, is a debt of conscience both in this world and the next.

“VARIOUS regions of torment” (XL); the hells named *Raurava*, *Mabā-  
raurava* &c. \* What is promised in words expressing, “I will give,” but not actually given, is a debt (XLVI). How can it be a debt; for it is received from him by reason of a promise, *not by reason of a loan*? The legislator replies, it is a debt of conscience. From the words, “in this world,” it appears, that payment should be enforced by the king; from the expression, “in the next world,” it appears, that the promise-breaker sinks to a region of torment. Some infer from the mention of debt, and from the exposition on a text cited in Book V, at v. CXI, (to those, to whom payment has been promised by the father,) that what has been promised, should be so paid by his son.

ALL this supposes a promise of what may be given; but it does not apply to the promise of what is unalienable. Under the directions for an amercement where such property is given away, the king should not impose a fine, *at the same time* compelling the performance of an undue act; nor should he omit to punish such an act. Therefore half the amercement for giving what is unalienable, is incurred by promising what should not be given; or the king should compel the man to pay as much as he has promised, but has not delivered: two punishments existing for the same offence, the lightest should be preferred.

IN some instances it is directed not to give what has been promised.

#### XLVII.

GO'TAMA:—A MAN shall not give even what he has promised, to a person, whom the law declares incapable of receiving.

HIS want of religious qualification is here the cause of his not being entitled to the gift.

*Vivāda Retnācara and Vivāda Chintāmeni.*

## XLVIII.

MENU : — SHOULD money or goods be given, or *promised as a gift*, by one man to another, who asks it for some religious act, the gift shall be void, if that act be not afterwards performed :

2. If the money be delivered, and the receiver, through pride or avarice, refuse *in that case* to return it, he shall be fined one *suverna* by the king, as a punishment for his theft.

MONEY or goods given, or promised, by one man, to another who asks it for a sacrifice, should he not afterwards apply it to that purpose, shall be taken back, if given ; and shall not be delivered, if promised *only*.

CULLÚCABHATTA.

IF the donor give money to a priest for a sacrifice which he himself requires, and the priest, not performing that duty, apply it to his own use, at his own pleasure, then the money may be withdrawn : but it must not be resumed, if the man, asking it *in these words*, “ I perform a sacrifice for myself, give me *this* money or *these* goods,” and receiving the money or goods, do not perform the religious ceremony. Thus some interpret the law : but that is not satisfactory ; for his asking it would not be the consideration. Therefore the construction is this ; ‘ to another, who asks it for some religious act ;’ that is, to a person who asks it, *at the same time* saying, “ I will perform an act of religion.”

ACCORDING to CULLÚCABHATTA, the sense of GO'TAMA's text is, “ what he has promised to a person not qualified on religious grounds ;” according to the *Retnácara*, it is, “ promised to a person disqualified on religious grounds.” Both should be admitted ; for a person not qualified, or *disqualified* on religious grounds, is incapable of a gift for religious purposes, since texts declare, “ marble transports not marble *over the deep* ;” and again, “ *wealth should not be distributed among women, nor among ignorant or dishonest men* :” and this must be understood of cases, where religi-

ous qualifications were supposed at the time of the promise ; as will be mentioned (LXII 3). But if wages, or the like, be the motives of the gift, the donor must deliver it even to a man not qualified on religious grounds.

THE circumstance of his not applying what has been promised, to the religious use *intended*, may be known by *publick* report ; for instance, some person declares, “ this man, taking money or goods on this account, gives it to a harlot.” If the receiver do not *in that case* surrender what has been given, or if he forcibly take what has been promised, he shall be fined one *suverna* by the king ; and shall certainly be compelled to restore the thing. “ As a punishment for his theft ;” since it is thus declared, that he shall be punished as a thief, *it does not appear* that he should be made to restore it by mild remonstrance and the like.



## ARTICLE II.

## ON VALID OR IRREVOCABLE GIFTS.

## XLIX.

VRĪHASPATI:—THINGS once delivered on the following eight accounts cannot be resumed, as wages, for *the pleasure of hearing poets or musicians and the like*, as the price of goods sold, as a nuptial gift to a bride *or her family*, as an acknowledgment to a benefactor, as a present to a worthy man, from natural affection, or from friendship.

“ As wages,” as a recompense paid for work performed: so CHANDEŚWARA, with whom MISRA concurs. Sacrificial fees might, according to *this exposition*, be deemed wages, but the grounds, on which they are not considered as such in forensick affairs, may be learned under the title of nonpayment of wages or hire.

“ For pleasure,” for *the gratification of seeing dancers and the like*

MISRA and CHANDEŚWARA.

“ As the price of goods,” paid to the vender. “ As a nuptial gift or gratuity,” delivered to the person who gives the bride, so explained by MISRA and CHANDEŚWARA a nuptial gratuity is paid at an *Arsha* marriage,\* and the pair of kine delivered at an *Arsha* marriage, though not *strictly* a gratuity, is comprehended in this term. “ As an acknowledgment to a benefactor,” in return for benefits received for instance, a man, not receiving wages, but from a motive of friendship, by his strength or abilities has accomplished some business for any person, what this person gives him, *is an acknowledgment to a benefactor*

“ As a present by a worthy man” versed in the sense of the scriptures, given by him for religious purposes to a *Brāhmana* So MISRA and CHAN-

DEŚWARA. It is mentioned incidentally, lest gifts for religious purposes should be reckoned in the number of revocable gifts : but NA'ŔEDA does not specify a present by, or to, a worthy man. His text will be cited (L).

“FROM affection” towards sons and the rest ; or from kindness to a friend.

MISRA.

OR “worthy” may be interpreted the state of worthiness ; what is given to a stranger endued therewith, though no benefit should have been received from him, *is a present to a worthy man*. “Affection ;” kindness, friendship, and so forth ; what is on that account given to a friend : *and the last term of the text may be interpreted tender regard, instead of friendship* ; what is on that account given to sons and the rest. These three terms are also familiar in rhetoric, as names for love.

#### L.

NA'ŔEDA :—THEY, who know the law of gifts, declare, that things once delivered as the price of goods sold, as wages, *for the pleasure of hearing poets, musicians or the like*, from natural affection, as an acknowledgment to a benefactor, as a nuptial gift to a bride *or her family*, and through regard, cannot be resumed.

By this is declared the seven fold distinction of valid or irrevocable gifts : it has been already said, that such gifts are of seven sorts (II 3).

“FROM natural affection, and through regard :” in these, worthiness may be comprehended. Therefore the eighth distinction, noticed by VRĪHASPATI, is not excluded. Or a present to a worthy man may intend a gift for religious purposes, not mentioned by NA'ŔEDA, because he had premised civil donations : “in civil affairs the law of gift is four fold” (II 2). It should not be objected, that presents for religious purposes are *subject to civil cognizance* ; else how could the king compel delivery ? The gift alone is religious ; delivery is *a matter of civil cognizance*. Then the law, concerning what may not be given and the like, should be admitted in the case of gifts for religious purposes ?

poses? In some instances it may be admitted; in some, it may be inconsistent with the reasoning; in some, it may contradict *express* laws.

MISRA, considering kindness as influencing every gift, reduces the distinctions to seven. But CHANDÉSWARA explains “a gift from natural affection” (XLIX), a donation to sons or the like, “through regard,” for religious purposes; and this, he adds, is intended by VRĪHASPATI in the expression, “a present by a worthy man: not distinguishing regard and kindness from pleasure, NA’REDA declares seven sorts; and VRĪHASPATI, distinguishing them, propounds eight sorts; thus, there is no inconsistency: or they may be reconciled by saying, it is not implied, that one *text* curtails the other.” His meaning is, that, since NA’REDA mentions natural affection in addition to regard and kindness, the number of seven sorts is complete; but as this might seem unsatisfactory, disparaging VRĪHASPATI, who has not specified natural affection *by the same term*, he subjoins another *mode of reconciling the texts*, “it is not implied &c.” that is, NA’REDA’s mentioning seven sorts does not imply an exclusion of others; and VRĪHASPATI’s distinctions *are comprehended* in the seven sorts of irrevocable gifts. An ample exposition of these opinions would be a mere display of skill; it is not of much use to the thorough examination of the subject.

A NUPTIAL gift or gratuity is a general term, and may comprehend what is now given to a bridegroom on his marriage to the daughter of a *Rājāsya Brāhmaṇa*.\* Even a nuptial gift of money, received from the kinsmen of a bridegroom, in honour of ancestors, is taken by the parent, who maintains the boy: such is the custom. But land and the like, received for the maintenance of the bride, is not taken *by her father in law*; nor property given at the bridal procession. Wealth also, received on a second marriage, is not taken by the bridegroom’s father, for a second marriage is contracted for the purpose of obtaining that wealth. Nor is property, which is received after marriage from the wife’s parents and kindred, taken by the husband’s father: such is the established usage.

BE it as it may be, according to CHANDÉSWARA’s opinion; but on the

\* The females of this tribe, settled on the western bank of the *Bh-ganā* river, are called, from the name of the country, *Rājāsya*, (proceeded *Rājāsya*).

other opinion, how are gifts to near neighbours, revenue paid to the king, and a present to a wife on the second marriage of her lord, comprehended in the text? To near neighbours presents are made from friendship, or as an acknowledgment to benefactors; for, in this instance, the return of an obligation may be supposed as a motive. Revenue is paid to the king as wages, or as the price of the produce of land, because he has an interest in the soil. What is given to a wife on the second marriage of her lord, appears to be given for pleasure (Book V, v. LXXXVII); for the former wife's consent to her husband's espousal of another affords him pleasure. This, and other cases may be understood according to circumstances: in all instances, pleasure *and gratification* may be supposed *to influence the gift*.

THE mention of these irrevocable gifts is intended to show the motive of donation. In these gifts it should be distinguished, whether the property might, or might not, be given away: but pleasure, as a motive of donation, must be understood with an exception to lust and the like. *On this* more will be said, under the title of void gifts.

## LI.

**DACSHA:—PRESENTS** given to a mother, a father, a spiritual teacher, a friend, a moral man, a benefactor, an indigent or unprotected person, and a learned man, are productive *of benefit*.

HERE it is not meant, that they are productive of moral benefit alone, but of other advantage also. Does not some benefit exist in every case; why is it said, that presents given to a mother and the rest are productive? They are productive of the highest benefit. If gifts be made to a mother or a father, prosperity in this world, and increase of religious merit, arise from their satisfaction. By gifts to a friend, the highest *degree* of friendship is obtained. By presents to a moral man deserving of them, the highest fame is obtained. A present to dancers is attended with fame, but gains *only* a middle degree of reputation; and therefore is not mentioned in this place. A gift to a benefactor prevents *the charge* of ingratitude. Donations to the indigent and

unprotected, from tenderness or from regard to duty, produce religious merit. Sometimes even what is given without any consideration of duty, on account of the respectable qualities of a deserving person, produces religious merit.

### LII.

CA'TYA'YANA:—WHAT is received for relieving a man from apprehension of danger, or saving him from actual peril, or for promoting a matter in which he was interested, is an acknowledgment to a benefactor.

2. WHERE a reward, offered for the recovery of property missing, is received for discovering it, the gift is considered as a *payment of wages*.
3. BUT if the reward be thus offered, "I will give all my property to him who saves me from this danger, to which my life is exposed," it shall not be so given.

AFTER relieving any man sinking under apprehensions from the king or the like, what is received from him, is an acknowledgment to a benefactor. So, what is received for preserving him from danger. A tiger lies in wait to seize some traveller, who perceives not the animal; but another man, coming from a distance, slays the tiger with a weapon, or, boldly taking this man in his arms, carries him far *from danger*: what the traveller, thus saved, gives to his preserver, is given as an acknowledgment to a benefactor. So is a present made for accomplishing some business: for instance, some person has in hand the marriage of his son, and any man, coming of his own accord, even though not induced by familiar intimacy, accomplishes the object; what that person gives to him, after the attainment of his object, in consideration of the favour received, is an acknowledgment to a benefactor: and so, in many other cases.

WHEN a person finds not some chattel required for a particular purpose, and, greatly distressed thereat, says, "whoever shows me this chattel, I will  
give

give him so much :” after a reward has been thus offered, some person coming points out the thing ; is the reward, then given, an acknowledgment to a benefactor, or not ? The legislator replies, it is not an acknowledgment to a benefactor, but “ wages” (LII 2 ).

*A reward, for the recovery of property missing, is there mentioned generally ; if any man whosoever act with a view to a reward, what is given to him, is considered as his wages : but, where a man acts spontaneously, or from habits of intimacy, what is given to him, is an acknowledgment to a benefactor.* Yet, even in the case of wages, should an excessive amount be promised by a man in extreme distress, it shall not be delivered (LII 3). Danger of life is mentioned to denote extreme distress ; in fact, should a man, during a conflagration, or during the sickness of his son, or the like, promise all his wealth, or one or two *lakshas*, to the person who shall save him, that promise is not valid. But it is reasonable, that the gift should be great in proportion to the benefit conferred ; if ten, fifteen, or twenty *pieces of money*, or the like, be promised, according to the circumstances of the case, the same should be paid. It must also be considered, that, the resumption of an excessive gift being shown where it has been promised but not delivered, the donor has an equal right to recover it, even though it have been actually delivered.

If an umpire determine a controversy between litigant parties according to law, and the party, who gains, or who loses, the cause, give him any gratuity, it is an acknowledgment to a benefactor : the gaining of the cause is an advantage to the one ; and the solution of doubts is a benefit to other party. But if the fee have been previously promised by any person, it falls under the description of wages. Yet, if any litigant party, being distressed, should in any instance promise, or actually give, an excessive fee to an umpire, the excess, above the sixth part of the value in dispute, may be resumed ; deducting a sixth part of that value from the amount promised or paid, he may recover the remainder, even through the intervention of the king. This is intimated by JIMUTA VAHANA, in the *Dāya bhāga* or *treatise on inheritance* : and RAGHUNANDANA, explaining the text of CA'TYA'YANA respecting wealth acquired by science, “ what has been received as a gift from a pupil, as a gratuity for the performance of a sacrifice, as a fee for answering a question in casuistry,

"causiftry, or for afcertaining a doubtful point of law," mentions the fixth part or the like, which is received for well afcertaining *the point referred by* litigant parties, who apply for an explanation of the law.

If there be feveral arbitrators, they all receive and fhare one fixth part : for that muft be intended ; elfe, if there be fix arbitrators, the whole property would be loft *to the owner*. Since it is mentioned as received for well afcertaining the point *of law*, it follows, that, if the arbitrator, receiving the fee, do not well afcertain the *doutful* point, he fhall be amerced by the king ; and the fee fhall be reftored to the giver. Such is the reafon of the law conformable with exprefs ordinance. But it is customary fometimes to give a confiderable reward to a *Brábmāna*, acting as arbitrator, and *ufually* living on alms, when he refolves a doubt with great labour, or tranfcendent knowledge of law ; or for fhewing the legal form of penance and expiation ; fince it is ordained, in the rules of penance, that a prefent fhall be made to a venerable perfon ; and in that cafe a gift is neceffary.

If any liberal prince or wealthy man, folicitous of gaining his caufe in a matter of fmall value, voluntarily give a great fee ; the king, informed of the circumftances, fhould not fine the arbitrator. It is wealth acquired by feience, and is given for pleafure ; and it may be faid to have been propounded by DACSHA, " to an indigent or unprotected perfon, or to a learned man" (LI).

THE gift of a milch cow and a bull by a perfon applying for inftructions on the forms of penance, is declared neceffary by the text ; " let the finner proclaim his fin, giving a milch cow and alfo a bull : " that *gift* is confidered as wages. A gratuity, which is paid to a prieft officiating at a facrifice, or to a fpiritual preceptor, is alfo confidered as a recompence ; and whatever is given to any *Brábmāna*, for the completion of a man's own bufinefs, is granted for religious purpofes. But in regard to holy property, as the giver's right is devefted after confecration, it muft then be merely delivered to priefts. This and other rules may be eftablifhed from a man's own judgment.

## A R T I C L E III.

## ON VOID GIFTS.

## LIII.

NA'REDA :—WHAT has been given by men agitated with fear, anger, lust, grief, or *the pain of* an incurable disease; or as a bribe, or in jest, or by mistake, or through any fraudulent practice, must be considered as ungiven;

2. So must any thing given by a minor, an idiot, a *slave or other* person not his own master, a diseased man, one insane or intoxicated, or in consideration of work unperformed.

"FEAR" of him, to whom it is given.

*The Retnâcara.*

"A BRIBE" (*utôccha*) shall be subsequently explained.\* "In jest;" by words expressing donation, but without the intention of giving. "By mistake;" delivering to one what was to be given to another; or delivering one thing instead of another which was to be given: so CHANDE'SWARA, VA'CHESPATI, and BHAVADE'VA.

"THROUGH any fraudulent practice;" inadvertently and the like: so VA'CHESPATI, BHAVADE'VA and the author of the *Pracâsa*. But CHANDE'SWARA explains it, proposing much and giving little.

"A MINOR;" one, who, from nonage, is unable to decide what should, or should not, be done. "An idiot," naturally incapable of distinguishing right from wrong. So CHANDE'SWARA. "Minor" is explained by BHAVADE'VA and VA'CHESPATI, one, who discriminates not what is, or is not, done. Fool they explain "idiot."



“ A PERSON not his own master ;” a son, slave, or the like. “ Intoxicated ;” drunk with wine or the like. “ Outcast ;” banished.\*

CHANDEŚWARA, VĀCHESPATI, and BHAVADEVA.

“ IN consideration of work unperformed ;” deluded by the false promises of the receiver : so CHANDEŚWARA. But BHAVADEVA and VĀCHESPATI explain it, a gift for a consideration, which is null.

“ A DISEASED man ;” afflicted with any malady. “ Agitated by pain,” afflicted with an incurable distemper. The *Mitācśharā*.

THE author of the *Mitācśharā* and others do not approve the reading, which omits “ a diseased man.” †The text is cited, with the other reading, in the *Cāmadbēnu*, *Mitācśharā*, *Vivāda-Chintāmeni*, *Dvaita-nirnaya*, and other works.

IN the *Cāmadbēnu* and the rest, the reading is *apavarjitam*, given (instead of *apavarjitaih*, by outcasts from their tribe); explained by HELA'YUDHA and the author of the *Mitācśharā*, “ what is given by a minor and the rest, must be considered as ungiven.” They suppose the validity of a gift made by an outcast ; yet both opinions may be held to coincide : thus, according to HELA'YUDHA and others, it should be said, that a man banished from the family, for the murder of the king, or other heinous crime perpetrated by him, has no right to give away property belonging to that family, because he is not his own master. The reading, quoted by CHANDEŚWARA, is *apavarjitaih*, or by *outcasts*, which he explains, banished from their tribe : but CHANDEŚWARA and the rest do not controvert the validity of a gift, when a banished man gives what he himself has acquired after his expulsion.

MEN agitated with fear, anger, lust, grief, or pain, are five, whose minds are disturbed from their natural state ; as is remarked by VĀCHESPATI-MISRA, CHANDEŚWARA, VĀCHESPATI BHATTACHĀRYA and BHAVADEVA

\* See the copies of NAKHĀ's text in MS., a other reading is followed in the translation.  
† The MS. of the *Chintāmeni* has instead of *Ita mad'ba'sua ar id'sia*.

THIS is declared by the same legislator, who thus describes a person not his own master.

#### LIV.

NA'REDA.—THOUGH *generally* his own master, what a man does, while disturbed from his natural state of mind, the wife have declared not done, because he is not *then* his own master.

SOME infer this meaning “where the volition of an owner, discriminating what may, and may not, be done, and guided solely by his own will, declares, as is actually intended by him, his own property divested, and dominion vested in a person capable of receiving, and actually intended by the donor, over the thing really intended to be given, that volition vests property in the donee’ In cases of fear and compulsion, the man is not guided solely by his own will, but solely by the will of another. In the case of a man agitated by anger or the like, he is not a person who discriminates what may, and may not, be done. If, terrified by another, he give his whole estate to any person for relieving him from apprehensions, his mind is not in its natural state. but, after recovering tranquillity, if he give any thing in the form of a recompense, the donation is valid. What is given as a bribe, or in jest, is a mere delivery, or a gift in words only. there is no volition vesting property in another. As for what is given by mistake, as gold instead of silver which should have been given, or any thing delivered to a *Sudra* instead of a *Brabmana* to whom it should have been given, the gold and the *Sudra* are not the *thing and the person* really intended, namely silver and a *Brabmana*. Though it be ascertained, that ten *suvernas* should be paid, if any how, through inattention or the like, fifteen *suvernas* be delivered, the gift is not valid, for they are not what was really intended to be given. or the donation is in this case void, because the giver did not discriminate what should, or should not, be done. Where much is proposed and little given, (as where a man proposes to give much for what may be effected at little cost, and after the work is accomplished, pays the simple due,) there, since the excess was only promised, or delivered, for the purpose of deluding, the will to vest property in another is wanting,

and

and the gift is therefore void, as in the case of a bribe: but with this distinction, that in the case of a bribe the whole gift is utterly null, and here it is void in part.

THIS will be best understood after an explanation of *bribe*. According to the opinion of MISRA such a fraudulent practice is comprehended in this description, for *cb'bala* or fraud is synonymous with *upadbi*, since what is denoted by the word "*cb'bala*" or deceit as employed by MENU, VR ĪHAS-PATI expresses by the word "*upadbi*" (Book I, v. CCXXXVIII); and CHANDEŚWARA quotes that and subsequent texts, premising these words, "VR ĪHAS-PATI on the subject of *legal* deceit (*cb'bala*), lawful confinement, and violent compulsion." *Upadbi* in general is any improper act. Consequently in every case of improper gift, where a donation is falsely promised, there is fraudulent practice. CHANDEŚWARA subjoins "and the like:" where a man intrusts his own property to another for the purpose of deceiving his creditor or the like, saying "it is given to him," the gift is void: and this should be included under the term, "and the like." Other cases may be determined, in this manner, by intelligent consideration.

HERE the gift is void, because the will of vesting property is wanting: and the want of such will is inferred from the improbability of such a gift being intended, from the character of the person, or from the necessity which then existed of deceiving him, or from the intention of the parties; this and other points should be determined by the wise. It must however be noticed, that, if a man engage a *Bráhmāna* in mechanical arts or the like by proposing great wages, it is fit he should receive a large recompense; because he is induced by the desire of wealth to deviate from his regular duty: but he should not receive excessive wages. Other cases should be determined in the same mode.

THE text of CA'TYA'YANA (LII 3) must be brought under this head according to the opinion of CHANDEŚWARA: but, MISRA and others explaining "through any fraudulent practice," inadvertently, it may be brought under the head of mistake; for there exists a mistake of what should not, for what should, be given.

IF the monthly wages of a hired servant be one *mudrà* or coin; and he has performed work, at one period, for ten months, at another for one month, at another again for eleven months; and afterwards, when it is proposed to pay the whole wages, some person, skilled in accounts, has noted the ciphers on the ground in a vertical line for the purpose of computing the sum; but, through some error in notation, mistaking the cipher of one for ten, computes accordingly; and thinking that thirty one *mudrás* are payable, says so to the servant's master; and the master pays that sum to the servant: afterwards some other person, skilled in accounts, detects the error: is not the gift or payment invalid? For it is given through deceit according to the opinion of MISRA: deceit signifies misleading; and here he is actually misled by the words of another. But according to CHANDÉSWARA it must be considered as given through a mistake respecting what should be given. How then can the opinion stated apply in this instance; for the thing and the person were really intended; the owner was able to discriminate what should, or should not, be done; he was governed by his own will; and he willed to transfer the property in those thirty one *mudrás*? The answer is, although the person were really intended, the giver was not aware that he was a proper donee as far as twenty one or twenty two *mudrás* only, and that thirty one *mudrás* should not have been given.

IN a similar case, if the hired servant reside at a distance, and the master die after sending thirty one *mudrás* by a messenger; when the excess of nine *mudrás* above his due becomes known, if the messenger and servant both wish to take it, and the king neglect to claim the money; who shall obtain it? <sup>6</sup> It should not be argued that, because the whole money is delivered to the servant, he is entitled to take it; but the messenger can have no pretensions to it. The servant, having no acknowledged property in the surplus, cannot take it, since it is a deposit for delivery in the hands of an intermediate person; and, if the messenger, computing the sum, by mistake caused the excess to be paid, then it is gained by his act. These lawyers answer, it may be so.

BUT others hold, that the act, respecting the nine *mudrás* which exceed his due, partakes not of the nature of theft; because, the owner was not aware at the time of the receipt, they are not strange property.

ment of *wages or hire*, for it was not regular to give so much. Therefore this is a semblance of gift: and whomsoever that intends, in him it vests *seeming* property. Afterwards, when it is proved by a plaintiff to be only the semblance of a gift, that title is devested, like the property in stolen goods. This should be established as shown by the practice of the best men. It is not seen among good customs, that the king, on failure of heirs, should, after the death of the giver, take property given to an improper person: or that any person whosoever may take it, if it be neglected by the king. Seizing it forcibly, he does not obtain what is thus acquired by robbery. To this opinion the best authors assent; and their assent is consistent with common sense. If it be asked, what proof is there of relative property? The answer is, that right is vested by inconsiderate volition.

BUT that is barred by the ordinance, "what has been given by mistake, " or through any fraudulent practice, must be considered as *ungen*" (LIII 1). It should not be argued, that the ordinance only shows the *subsequent revival of the donor's title*: for it is difficult to establish the suppression of relative property intermediately vested. This is denied; for it is, on the other hand, difficult to annex absence of mistake, or the like, as a requisite condition of vesting property by the will of the donor.

IF the difficulty of proving the revival of the donor's title, and the suppression of relative property, be retorted; the answer is, in a case where it is doubted whether there be, or be not, difficulties arising from very minute and logical distinctions, (as in the case of semblance of property,) the suppression and revival of the donor's title should be admitted in conformity with reason. In the case of robbery, this difficulty is raised by the sages themselves: but if the law, as propounded by them, must in that case prevail, even then, since civil ordinances are grounded on reasoning, such a construction should in this case be set forth: and it is indeed proper; for a rule expresses, that, "a principle of law, established in one instance, should be extended to other *similar* cases, provided there be no impediment." The suppression of a property intermediately vested may be established in this instance; for it would be contrary to reason, that a robber should have property in what he has seized against the will of another, and that *a donee should have none* in what has

has been given by the owner. If the messenger knowingly deceive the principal for the purpose of acquiring the property himself, it is a theft on his part. To affirm, that the thing becomes his, would be improper, for, if any criminal, liable to be punished by the king, apply to a principal officer of the realm to save him from that punishment, and be told, "I will save thee by giving a hundred *midras* to the king's minister, and that officer, taking the money, save the criminal, influencing the king's minister by verbal persuasion. When the circumstance becomes known, the criminal, from his want of power, cannot cover the money, but the king's minister, (alleging, "this was given for me, why do you take it?") may reasonably exact it from that officer. Here the reason of the law, as abovementioned, is pertinent.

"MINOR (LIII 2) is a term employed indefinitely, and comprehends a decrepit old man. This CHANDESWARA, MISRA, and others expressly declare. "Idiot" is explained by CHANDESWARA, naturally destitute of power to discriminate what may, and may not, be done. By inserting "naturally" the word minor would not by any means be rendered unmeaning. Of what use is that insertion in explaining *idiot*? "Minor" should not therefore be limited to age, and "idiot" should be otherwise explained. According to its etymology from the verb *subh*, to be stupid or want sense, *mud'va* signifies stupid or foolish, and thence may signify unknowing. Consequently, where a man gives any thing ignorantly, the gift is void. For instance, a *Brabmana*, supposing that kine may not be attended by a man of the sacerdotal class because it is the duty of a *Vaisya*, has given away his cow to some person, afterwards, discovering that a *Brabmana* may attend kine, (for no law forbids it,) the donor says, "I gave you the cow through ignorance, therefore restore her," in that case the gift is void, and the cow must be restored.

If it be said, the gift is not void, then the person, who retains all that is given by mistake, would be innocent, for there is a contract of donation. What difference is there between a thing given through mistake respecting himself, and through mistake respecting the gift? As a payment of fifteen *suvernas*, where ten *suvernas* should be paid, is void, so the gift is utterly null, where the whole ought not to have been given. Thus some expound the law. But that

that is wrong ; for it would fall under the description of things given inadvertently or by mistake. In fact it is not expressly said by any author, that, in such a case, the gift is void : and we do not admit *the inference* ; for it is irregular to assert, in a doubtful case, that the act done is null.

In the case of an erroneous payment of wages, *the excess* must necessarily be refundable ; for, in the payment of wages, absolute gift is not contemplated. It should not be objected, that, in the case *stated*, the donation is void, because there is no such duty, as is the declared motive of relinquishment ; namely, not to attend kine. Without intending *such* dereliction, the gift may be valid, because there is the intention of making a gift transferring property to another, and a benefit to him is designed : consequently, where a thing is relinquished on a mistaken motive for dereliction it may be resumed ; where it is given on a mistaken motive for relinquishment, it cannot be withdrawn ; but where it is given on a mistaken motive for donation, it may be retracted. This rule coincides with our opinion.

WHERE a king, from the mistaken supposition that the partition of a kingdom is forbidden, gives his dominions to one son, it is not fit that the gift be resumed on proof brought by the other sons, from law or custom, that partition of kingdoms is not forbidden ; for his motives in making the donation are to confirm the kingdom to his son, and avoid partition ; and his motive for avoiding that is the supposition, that a kingdom is indivisible : though he do mistake, *it does not follow that* partition may not be omitted ; for the kingdom is *thereby* perpetuated : to set aside a gift already made, it must be proved that all had ownership *but in this case* the rest had no prior title to claim partition ; the possessor himself may legally omit it ; and the avoiding of it, which is the motive of the gift, preserves the kingdom to the son : and the donation is not void, where the motive is *founded in fact*. It should not be objected, that by removing the grounds for avoiding partition, and by thus showing its legality, the motive of the gift, *which was made to* avoid it, is rendered null, and the donation is *therefore* void. Although the thought, that partition has been forbidden, which is the motive for avoiding it, be erroneous, still the division of certain property dependent on another person is not legal without the will to divide it and the act of making a distribution ;

bution ; and the motive of the gift *made to avoid* partition cannot be evaded. But in the case of the semblance of gift, since the act originates in error, that act of volition is unheeded : the property of the donee is divested without consideration of persons. After much discussion, the question may be determined by the wife.

OTHERS interpret “idiot,” one whose mind is alienated through the influence of witches or the like, or who is deprived of sense through the influence of a particular act (*namely forcery*).

“ A PERSON NOT HIS OWN MASTER,” a son, slave, or the like: so VA’CHESPATI-MISRA, CHANDÉSWARA, BHAVADÉVA and VACHESPATI-BHATTACHA’RYA.

HERE some remark, that MISRA and the rest have not explained the term as denoting one who is not owner, but have explained it “ son, slave, or the like,” by which it is denoted, that their meaning is this a gift, made by a person technically denominated not his own master, is void. Persons so denominated, are described by NA’REDA, as cited by VA’CHESPATI BHATTACHA’RYA (XV). If there be an unseparated brother, senior by age and virtue, and occupied in maintaining the whole family, a younger brother has no power to give or sell either share of the whole joint-estate, therefore the gift or sale is void: but a contract, made by such an elder brother, is valid for both shares.

#### LV.

VYA’SA:—BUT, at a time of distress, for the support of his household, and particularly for the performance of religious duties, even a single coparcener may give, mortgage, or sell the immoveable estate.

HOWEVER, the younger brother has power over his own acquired property ; his want of power will *hereafter* be limited to particular sorts of property . and here it must be so established from the reason of the law. But, if the brother be senior by age alone, his gift of the joint-estate is good for his own share only.



“ ALL subjects are dependent ” (XV 2) : land or the like, given by subjects with the king’s consent, is a valid gift; so, if a corrody be granted by a wealthy man, the gift of it, with his assent, is *valid*.

“ A PUPIL is declared dependent ” (XV 2) : the pupil is subject to contract because the teacher shares the fruit of his *actions* (Book III, Chapter I, v. XIII and XVII), and what a pupil, who is maintained by his teacher, gives to another without the assent of his instructor is not legal; for he is dependent in regard to all acts generally. It is meant, that even a trifling gift is void.

WOMEN and the rest being dependent in all actions generally, even the gift of female property and the like, without the assent of the husband or master, is not valid.

## LVI.

MENU : — THREE persons, a wife, a son, and a slave, are declared by law to have *in general* no wealth exclusively their own; the wealth, which they may earn, is *regularly* acquired for the man, to whom they belong.\*

PERSONS not their own masters are sons, slaves, and the like : this supposes property belonging to the son, slave, and the rest; for the gift of that, which belongs to the father or master, is void, because it is made without ownership (Chapter II, v. XXVII).

AGAIN; by declaring the dominion of women over female property it is shown that the gift, *made by the husband*, is void; and the alienation of *either property* is void because the wife has a title to the husband’s estate (Book V, v. CCCCXV); and the son has ownership in the paternal estate during the life of the father (XXXI); but this (LVI) must be understood of property acquired by the wife, son, or slave. “ A householder is not independent &c.” (XV 3); the father has not power to give or aliene, for civil purposes, gems, pearls, land or the like, which have descended from ancestors, nor immoveable property, even though acquired by himself (XIV).

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\* See Book III, Chapter I, v. LII.

Thus they interpret the law: but that is not satisfactory, for it has been already answered. The gift even of the immoveable patrimony, for religious purposes, is valid without the assent of sons and the rest, for excellent usage has legalized *such donations*, and no particular ordinance is found on this point neither VIJNYANE'SWARA, nor any other author, expressly declares, that property inherited from the paternal grandfather, and given by the father without the assent of the sons, is a void gift. Thus in explaining the text, "the father and sons have equal dominion &c." (XXXI), VIJNYAÑE'SWARA says, the son may oppose a father attempting to give away property inherited from the paternal grandfather. Therefore persons not their own masters, as a son, slave or the like, are mentioned, because they are nearly connected with the owner, it might *on that account* be doubted whether their gifts be valid. there can be no question, whether a gift made by a stranger be good in law, therefore it has not been noticed.

"ONE insane" is not in his natural state. A gift, made by an outcast, is void, because property is forfeited by degradation. "In consideration of work unperformed" what a man gives, deceived by the promise of the donee, "I will execute this business for thee, give me a reward," is not a valid gift, if the work be unperformed and this relates to the payment of wages. So, in regard to a gift in expectation of a grateful return.

If some person, having no issue, tell any man related, or not related, to him, "I give thee all my property, and thou shalt perform the last duties for me," but the land or the like be afterwards occupied by the donor, what is the rule in regard to the validity of the gift. Without occupancy the donation cannot be valid but if the donee reply, "I give this to preserve the aged giver from poverty," not, "I relinquish this," then the gift is valid on proof of occupancy. The donation is null, if the consideration be void, the ground for invalidating the gift is the failure of *any* part of the declared purpose.

HERE an observation should be made. If it be asked, what is the rule, in the case where some considerations, such as maintenance for life, and so forth, are performed; and some considerations, such as the funeral rites, are not performed?

formed? *the answer is*, the gift is void, because the donee's agreement is broken by not performing the whole contract, and because there is a failure in some part of the declared purposes.

IN the *Mitācārā* the distinction is declared between a diseased man and one agitated by *the pain of* a disease: "a diseased man," afflicted with any disease; "agitated by pain," afflicted with an incurable disease. If it be leprosy or the like, the man afflicted with that distemper has not ownership in the estate; but, if the giver have ownership, it is not consistent with reason, that the payment of wages or the like should be void. Nor is it proper to say, that this prohibition regards only what is given from friendship; for there is no such limitation of the law. This and other points should be considered.

BUT others explain "agitated by pain," afflicted with a distemper, which destroys sense, as a complicated marasmus, or the like; and "a diseased man," one whose sense has been destroyed, without such a distemper, and without intoxication, but by swallowing pernicious drugs or the like.

BHAVADEVĀ, CHANDEŚWARA, and VA'CHESPATI, remark, that a gift, made for religious purposes even by a diseased man, is valid (III). This should be admitted, and is meant by JĪMU'TA VA'HANA, RAGHUNANDANA, and others: but there is no question on the validity of gifts for religious purposes, since NĀREDA limits the rules to civil donation (II 2); and this text (III) is quoted by MISRA under the title of loans and payment, and is explained by us in the first book, as applicable to the subject of the payment of debts.

IN fact, as rich and easy signifies possessing wealth and tranquillity, so the text must be acknowledged to signify, that gifts, made by persons in the circumstances described, (agitated by fear &c.) are void. A gift, made by one influenced by avarice, is valid, if the profit be obtained; else, it is void. But a donation, made without ownership, is always null. Gift or delivery of things as wages, for pleasure, for purchase, as a nuptial fee, as a grateful return, as a present to a worthy man, from natural affection, or from friendship, are valid and irrevocable. Hence, what is given for a  
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pose ; and it is excluded from void donations. Even a minor makes presents  
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agitated by anger or the like, is valid, provided his mind be tranquil during  
that act and at that time : otherwise it is not ; for contracts are univ-  
ersally forbidden during a state of insanity or the like (LIV).

## LVII.

MENU:—A CONTRACT made by a person intoxicated or in-  
sane, or grievously disordered, or wholly dependent, by an  
infant or a decrepit old man, or *in the name of another* by a  
person without authority, is utterly null.

## LVIII.

YA'JNYAWALCYA:—A CONTRACT made by a person intoxi-  
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SINCE there are no other texts of MENU and YA'JNYAWALCYA, explain-  
ing illegal donation, the enumeration of void gifts must be taken from these.  
Singly, the gift of wages by a man possessing his senses is valid ; joined with  
madness or the like, the intentional payment of wages during a lucid in-  
terval *may also be valid* ; but singly, a gift by a man affected by insanity or  
the like is void. Such is the meaning.

IF the validity of gifts made in consideration of duty, notwithstanding  
sickness, be intended by authors ; then a similar donation, by an insane per-

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son, may be valid, from parity of reasoning in the want of positive texts. This and other points should be determined.

MISRA observes, that gifts from an impulse of lust or anger have been explained in the case of loan and payment, and after premising the words 'in fact,' he infers the text of CA'TYA'YANA (Book I, v CCIV).

WHAT is the rule in regard to things given by an indolent man or the like, or by a weak man and so forth, for both are omitted? If extorted by fear or the like, the gift is void, if that do not attend the donation, it is valid. In fact a gift, attended with any defect, is void but a donation, springing from a *sufficient* motive, is valid.

AN observation should be here made. If it be asked whether a commodity sold, and a loan advanced, be stated in the number of irrevocable gifts, or in the number of void donations, and what is the rule respecting them, *the answer is*, the one might be comprehended under the term *which has been explained* the price of a commodity sold, *for it may mean* a commodity receivable for a price, and the interest of a loan may be *deemed* a present given as an acknowledgment to a benefactor, but regulated by the law. Or what is declared by ordinances concerning loan and payment, may be added to the number of irrevocable gifts, under the remark of CHANDESWARA "it is not implied that one *text* curtails another.

CA'TYA'YANA explains *utcocha* or bribe.

## LIX

CA'TYA'YANA:—WHATEVER is received for giving information of a thief or a robber, of a man violating the rules of his class, or of an adulterer, for producing a man of depraved manners *ready to commit thefts or other crimes*, or for procuring a man to give false testimony,

2. That is all denominated *utcocha* or *given on an illegal consideration*: the giver shall not be fined, but an arbitrator

tor or intermediate person, *receiving a bribe*, shall be held guilty.

WHEN theft and violence are both committed, the offender is "a thief and robber." "A man violating the rules of his class;" an outcast: CHANDÉSWARA explains the terms similarly. What is promised to the person who produces a thief, a robber, an outcast, an adulterer, or a man of depraved manners, or to a person who suborns false testimony, is called *utócha*; the same *authority* expressly declares, that, if promised, it shall not be delivered; if given, it shall be resumed.

## LX.

CA'TYA'YANA:—IF a bribe be promised for any purpose, it shall by no means be given, although the consideration be performed;

2. But if it had at first been actually given, it shall be restored by forcible means; and a fine of eleven times as much is ordained by the son of GA'RGA and by the son of MENU.\*

A BRIBE promised, as the recompense of an evil act, shall not be given, though the consideration be performed.

*Utócha*, or *utóchà*, is of both genders, (*masculine and feminine*,) as shown in two different texts.

IF it had been first received, and the information afterwards given, it must be restored. In this explanation, MISRA, CHANDÉSWARA, and the rest, concur. If he refuse to restore it, he shall be compelled by forcible means; and a fine shall in this case be imposed: and that penalty is fixed at eleven times as much as was promised. So CHANDÉSWARA.

WHOM does the fine concern? The receiver of the bribe. That the giv-

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\* Another reading gives the name of GA'LATA



er (the person who obtains secret information by the disbursement of money) should be fined, he denies in the former text, "the giver shall not be fined." But if an arbitrator or intermediate person (for the word has both senses) receive a bribe, he shall be punished. Herein the *Viváda Chintámeni* concurs. In fact, if one be concealed, and another search for him, the intermediate person, deluded by a bribe and producing him, shall be held guilty. CHANDE'SWARA explains it, "the intermediate person, and he, who causes the bribe to be given, shall not be punished; but the receiver shall be fined eleven times as much." His meaning is, that the giver, or person who causes the bribe to be given, and the intermediate person employed, shall not be fined.

ACCORDING to the *Viváda Chintámeni*, the privative A is inserted; *afatya*, false testimony. But some read *fatya*, or true testimony. Truth must necessarily be spoken even without wages: but if a man, receiving hire, or the promise of it, give true testimony, it is proper he should restore the money, because it has been received for a business, in which wages are improper. But he, who from avarice consents to act dishonestly in giving false testimony, should not be compelled to restore what he receives, because it is the price for which he sells his honesty. Thus they interpret the text. But the reading of the *Viváda Chintámeni* tends to maintain honesty: thus, if the practice suggested by such an ordinance be duly enforced, none would receive a bribe to procure false testimony; provided the promoter of a false suit conceal it not.

OTHERS say, what is given for a false accusation of theft, or for the discovery of depraved manners, or to procure false testimony, may be resumed; and if promised, it should not be delivered. On the question whether the giver shall, or shall not, be fined, (for he might be amerced, since he commits an offence,) the text declares, "he shall not be fined." Since a false accusation is infamous, there might be some amercement imposed on the suborner as guilty of an offence; but the law has excused the fine. The intermediate person, between the accused and the suborner, preferring the accusation from a motive of avarice, shall be fined: or according to another construction, he shall not be amerced; that is, he shall not be fined in an equal amercement; but he shall

pay a quarter less *than the amercement mentioned in another place*; for he is guilty of an offence. The grounds, on which the bribe is restored, are, that the gift is made for the purpose of deluding: what is the rule, if it be given in earnest? It shall not be restored, for it is given by an owner, who is his own master. But what is given or promised for the purpose of deluding, is not good in law. "If a bribe be promised for any purpose &c." (LX); this means what any person, solely considering the accomplishment of his purpose, promises for the sake of delusion: and this should be understood of business, for which wages are not proper.

# LXI.

CA'TYA'YANA:—WHAT has been given by men under the impulse of lust, or anger, or by such as are not their own masters, or by one diseased, or deprived of virility, or inebriated, or of unsound mind, or through mistake, or in jest, may be taken back.

"ONE diseased;" affected with disease and the like, or impelled by hunger and so forth. A gift made by one deprived of virility is void, for he has not power over the family-estate: but, if he give away what he himself acquired, the gift is valid. It is not *directed*, that one deprived of virility, buying a commodity, should not pay the price; *but, in regard to what is given through friendship, it is consistent with reason.*

"OF unsound mind;" naturally incapable of distinguishing right from wrong; or whose mind is alienated in consequence of disease, or of *magical* arts; or who is deluded by a promise in this form "I will perform this work for thee."

By saying, "it may be taken back," the gift is declared void. Donations made under the influence of grief or the like, or by a minor, must be understood from the concurrent import of this text with that of NA'REDA (LIII).

# LXII.

VRĪHASPATI:—WHAT is given by a person in wrath or *ex-*  
cessive

cessive joy, or through inadvertence, or during disease, minority or madness, or under the impulse of terror, or by one intoxicated or extremely old, or by an outcast or an idiot, or by a man afflicted with grief or with pain,

2. Or what is given in sport; all this is declared ungiven, or void.
3. If any thing be given for a consideration unperformed, or to a bad man mistaken for a good one, or for any illegal act, the owner may take it back.

A GIFT made through inadvertency caused by joy is not void; but what is given without discrimination, the mind being disturbed by excessive joy, is *invalid*: or it may be understood of what is given through joy originating in lust. Inadvertency or mistake have been already explained. "Extremely old;" one whose organs of sense are impaired: so MISRA. "Outcast;" banished for his crimes: the term is so explained in the *Retnâcara*. "An idiot;" the term is interchangeable with *mâd'ba* already explained. "Given in sport" or in play: so the *Retnâcara*. The word is synonymous with that, which has been already explained "given in jest."

"GIVEN for a consideration;" in expectation that the donee will perform some work: if the consideration be not performed, the gift is void. "To a bad man" (or to any unworthy man); as the gift of gold to a man of the servile class; or a present to a vicious priest, where the declared intention was to give it to a virtuous priest: for the text expresses, "mistaken for a good one." However, what is given to an unworthy man, but without distinguishing whether it be intended for a worthy person or not, is valid; for it is declared that every donation produces fruit; and none is declared universally unworthy of gifts.

#### LXIII.

MENU:—A GIFT to one not a *Brâhmâna* produces fruit of a middle standard; to one, who calls himself a *Brâhmâna*, double;

double ; to a well-read *Bráhmaṇa*, a hundred thousand fold ; to one, who has read all the *Védas*, infinite.

#### LXIV.

*Uncertain* : — GIFTS are ever deemed virtuous, even though presented to a *Swapáca* or the like ; but especially, if given at a proper time and place, in proper form, and to a worthy man.

THESE texts cannot be said to relate to the gift of food ; for there is no such limitation. The expression, “ stone transports not stone over the deep,” is intended as praise of men who deserve gifts.

“ To a person who calls himself a *Bráhmaṇa* ;” who says, “ I am a *Bráhmaṇa*,” but *in fact* belongs not to the sacerdotal class : and he must neither be vicious, nor degraded. “ Ever,” at all times and in all countries, “ gifts are virtuous,” or productive, even though, presented to a *Swapáca*, (a mixed class equal in degree to the *Chándála*,) that is, presented to any person : but especially, if given “ at a proper place,” in a country frequented by the black antelope, or on the banks of the Ganges or the like ; “ at a proper time,” during an eclipse of the sun or moon ; “ in proper form,” looking towards the east, delivering *cusa*, *tila*, and water, and so forth ; “ to a worthy man,” to one who has read all the *Védas* ; such gifts “ especially” produce fruit ; they produce the greatest reward.

“ For any illegal act ;” from this exposition of CHANDE'SWARA compared with the gloss of CULLÚCABHATTA on the text of MENU (XLVIII), “ if the man, asking a gift for some religious act, do not perform it, the owner may resume a gift thus applied to a purpose different from a religious one,” his meaning may be thus stated, “ for an act not religious :” for he admits such an explanation of the text formerly quoted from GÓTAMA. Consequently, if a man ask and receive a gift for a religious act, or for consumption, and give it to a harlot, the donation is void.

WHAT is given for a false accusation of adultery, is a void gift : what  
NARADA

NA' REDA and CA'TYA'YANA call a bribe or *utcôcha*, is explained, according to the texts of other *sages*, given for an illegal act. But this appears wrong, for that cannot be established in a text of NA' REDA to the same purport.

#### LXV.

NA' REDA:—BUT what shall be given ignorantly to a bad man called a good one, or for an illegal act, must be considered as ungiven.

FROM the term “ignorantly,” and from the word “but,” it appears, that this text does not set forth the invalidity of a gift delivered as a bribe for an accusation of adultery and there is no difficulty in saying, that the text of VRĪHASPATI relates to the same *subject*.

IF that, for which the gift is made, be not *performed*, the giver may resume it so the *Privada Chintāmen*. Consequently, if a man, saying “I will give it to dancers,” do not so appropriate the gift, it may be resumed. But, the matter being trifling, a generous giver will not resume it such is the custom.

ALL these opinions should be admitted but it must be considered, that, since the text last cited expresses “what is given to a bad man called a good one,” it would be elegant in the former text to limit “mistake” to the thing to be given, else there is a vain repetition.

#### LXVI.

GO'TAMA:—THE words of a man influenced by wrath, excessive joy, terror, sickness, or avarice, or of a minor, of a decrepit old man, of an idiot, or of one intoxicated or mad, are vain.

#### LXVII.

NA' REDA. — HE, who foolishly receives what is deemed ungiven, and he, who gives what may not be *legally* aliened, should be punished by a king, who knows the law,

VOID gifts of sixteen forms, as mentioned by NA' REDA , and unalienable property, of eight sorts, as declared by the same.

The *Retnacara*.

THE cases, mentioned by other sages, should also be admitted and what is extorted by force is likewise considered as ungiven<sup>†</sup> (Chapter II, v. X) , and that is comprehended, in the text of NA REDA, under gifts through fear.

A FINE is ordained for him who gives what may not legally be aliened, not for the receiver therefore it is not inferred, that it should be restored. It follows that a gift of what *regularly* should not be aliened, is nevertheless valid If any one give away joint-property, another owner comes and says, " what power had he to give the whole ? Restore therefore my share " He cannot say, " restore the whole estate Such is the usage seen in practice but custom is derived from the ancients *as were* versed in the law It cannot therefore be forcibly abrogated but in some instances custom has been partly changed by self-authorized moderns, who pretend to wisdom and neglect the law. To reconcile it, respect should be shown to the rules of jurisprudence, observing also time and place.

#### LXVIII.

MENU: — LET him fully consider the nature of truth, the state of the case, and his own person, and, next, the witnesses, the place, the mode, and the time, firmly adhering to all the rules of practice.

LET the king, inspecting judicial proceedings, detect fraud, and view the truth, let him consider " the case, " or what belongs to it (for the term may be taken as a derivative bearing this sense), that is, the forensic practice respecting such things, whether cattle, gold, or the like *let him avoid* trifling errors, lest he be derided for his want of sagacity, and let him consider his own person, *remembering that* by just decisions he will partake of celestial bliss, and so forth let him consider the witnesses, *whether they* be observant of truth *or not* let him consider the place and time, whether they

be suitable, and the form, whether the point contested be in its nature probable or improbable, and so forth.

CULLUCABHATTA

OTHERS thus explain the text, let him consider the truth, "this man speaks truth, that man speaks deceitfully let him decide the matter, detecting fraud and so forth. The same is intended by CULLUCABHATTA. Let him consider the wealth of the party, his assets for the payment of a fine consequently the meaning is, that an amercement should be imposed according to the ability of the offender. Let him consider "his own person, let him reflect, "who am I? I, who am appointed by the supreme ruler to discriminate justice and injustice, have no other friend, neither the accused, nor the accuser, is a friend to be treated with partiality." This is also intimated by CULLUCABHATTA. Let him consider the witnesses, let him confront and examine them to ascertain whether they speak from contrivance or relate the fact. Let him decide the matter by incidentally investigating the place and time, and so forth in what place, and in what occupation, to approach the wife of another is a high offence, let him investigate all that, to impose the severest fine for an offence committed in that place and in that occupation. Again, since criminals, deserving capital punishment, are numerous in times abounding with iniquity, the depopulation of the realm might be apprehended, in that case, instead of capital punishment, let him confiscate the whole estate of the offender, command ignominious tuncure, and inflict other punishments, according to the nature of the offences, including theft. Let him consider "the form, or nature of the acts even if the act be proved to have been done in jest or the like, he must inspect the judicial proceed-

END OF BOOK II.

## BOOK III.

### ON THE NONPERFORMANCE OF AGREEMENTS, &c.

#### CHAPTER I.

##### ON THE NONPAYMENT OF WAGES OR HIRE.

#### SECTION I.

##### ON SERVANTS AND OTHERS BOUND TO OBEDIENCE.

###### I.

**V**RĪHASPATI:—UNALIENABLE *property* and other *titles of gift* have been fully declared; the rules for servants are now delivered: and first is propounded the title of promised obedience;

2. Next nonpayment of *wages or hire*; and lastly disputes between master and herdsman in *their* order. This is the triple distinction of servants.

THIS *topick of persons promising obedience, and of such as are disobedient,*  
is a title of law.

The *Chintāmeni*.

UNALIENA\*



UNALIENABLE property and other *titles of gift* (what may, or may not, be given, and what is, or is not, a valid gift) have been fully declared; next in order the law respecting servants is delivered. What relates to him, who promises obedience but yields it not, is a title of law, as disobedience and so forth: that is first propounded; the cases are decided with penalties as specified in their proper place. "Next, nonpayment of wages;" or withholding the hire of labour: afterwards the disputes between master and herdsman are declared in order: this *distinction* of *dependent* bound to obedience, of *hireling* receiving wages, of servant (such as herdsman) differently maintained, forms the triple distinction of servants. Such is the sense of the text; consequently, the rules respecting them, together with the contests between master and herdsman, form a single title of law, according to VRĪHASPATI.

BUT other lawyers, finding in the *Retnācara* a different reading of the text of VRĪHASPATI, (*Āsūrūśhābhyupētya*, instead of *Ṣuśrūśhām abhyupaitya*) say, that the title of judicial procedure is named *Āsūrūśhābhyupētya*, a compound in which the last word is the subject, "disobedience of him who has promised obedience;" for it is similar to the compound *Rājadanta*, king of teeth by the rule of CRAMADIŚWARACHĀRYA; "in some other instances also the subject is placed last." NA'REDA likewise so denominates this title of law.

## II.

NA'REDA:—WHEN a man yields not the obedience he has promised, it is called a breach of promised obedience, which is a title of law.

*Literally*, that man, who, promising obedience, yields it not, is named by the forensic term of "not obedient as he had promised;" or his breach of duty is a title of judicial procedure, called (*Āsūrūśhābhyupētya*) disobedience of him who has promised observance: consequently, the apposition gives this sense, "his title of law is," instead of "it is a title of law." They thus explain the last verse (I 2); "the distinct rules respecting servants, (under the heads of breach of promised obedience, nonpayment of wages

wages or hire, and disputes between master and herdsman,) form the triple distinction of laws respecting servants and wages."

THE title of law respecting him, who, promising obedience (or compliance with commands), afterwards yields it not, is called (*abhyupētyāśuśrūṣha*) promise and disobedience. The *Mitācśharā*.

IN fact, the words do not form a compound: consequently the sense of VRĪHASPATI'S text is, "the promise and disobedience are first propounded, and thereon rests a double *subject of contest*." He mentions it, "wages &c.:" nonpayment of wages, and disputes between master and servant, are delivered in their order: "this, which will be mentioned, is the triple distinction of servants;" namely labourer, slave, and herdsman. The sense of NA'REDA'S text is the same: neither is there any *needless* repetition; for in the first hemistich the title of law is not named. Nor is there any thing superfluous in it; for it is stated by way of example: the first hemistich describes the person implied by the name assigned in the second; and it is intended to exclude accidental disobedience. The text should be thus interpreted.

### III.

NA'REOA describes servants:—PERSONS bound to obedience are in law declared by the learned to be of five kinds; four are servants or labourers, the rest, namely the slaves, are of fifteen *forts*.

BUT in the *Mitācśharā* it is read; "among those, the slaves are fifteen."\* The sense is, persons bound to obedience are servants of five kinds; four are labourers; the other, called slave, is of thrice five, or fifteen, *forts*. VIJ-NYA'NE'SWARA, VA'CHESPATI MISRA, and others so explain the text.

### IV.

VRĪHASPATI:—THEY are declared to be of many forts, accord-

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\* *Teṣāṃ* instead of *teṣab*

ing to class and work ; and four fold for science, for human knowledge, for love, or for pay.

2. OF these again, each is distinguished according to the difference of work.

THEY (servants) are declared to be of many sorts. How ? According to class and work ; according to the distinction of tribes and of labour. He mentions the distinctions of work ; “ science &c.” “ Science ;” knowledge of the *Vēdas* and the like. “ Human knowledge ;” skill in arts and the like, explained in the dictionary of AMERA, arts and ordinances, or *human sciences*. “ Love ;” *becoming a servant* through the influence of love. “ Pay,” *literally* wealth ; that is, money or goods. According to the distinction of labour for these causes, servants are discriminated ; these four kinds are again distinguished according to the difference of work : all this will be explained.

## V.

NA'REDA : — A PUPIL, an apprentice, a hired servant, and fourthly a commissioned servant, perform work ; slaves are those born of a female slave in the house, or the like.

“ A PUPIL” is one who seeks *the acquisition of science* ; an apprentice seeks *the acquisition of skill* in arts ; a hireling and a commissioned servant both seek pay. A servant “ for love” is a slave of a particular description ; the other slaves are similar to servants for pay. Thus the sense is the same as in *the text of VRĪHASPATI*.

## VI.

NA'REDA : \* — THE wife have declared their general dependence.

HERE some explain dependence, or not being their own masters, as denoting that they are incapable of acquiring wealth for themselves. But others hold their

\* Not named in the original, but the texts, which precede and follow this, are delivered as NA'AREDA's, and it seems to be implied, that this also is quoted from the same authority. T,

dependence to mean subjection to a master ; consequently the sense is, they commit a sin, and shall be punished as is proper, if they act without, or against, their master's commands : but there is no ordinance showing universally the property of their masters in what is acquired by them ; but where, and when, it is shown by the law that slaves or others are incapable of property ; even there, and then, what they acquire, becomes the property of their masters : and this mention of dependence is intended to determine contests respecting the independence of master and servant, or of teacher and pupil.

## VII.

NA'REDA notices the distinction of *servants* by class : — HE is called a labourer by class, and has a distinct subsistence.

THE meaning is, whatever be the servant's class, he should perform the work of it ; and his subsistence and abode should also be regulated by his class. For instance, the use of arms, and a habitation in the best place, for a *Cshatriya* ; clearing forests and the like, and a habitation in the worst place, for the lowest *Sûdra*.

## VIII.

VR'ĪHASPATI describes the pupil : — THE triple science is declared to be the *Rîch*, *Yayush*, and *Sâma-vêdas* ; for these, let him pay obedience to a spiritual teacher, as directed by the law.

THE *Rîch* and other *Vêdas* are mentioned generally, comprehending the *At'barva-vêda* and the like. " The obedience directed, or prescribed, by the law ; " consequently, though it be not specified, obedience is necessary ; and he, who yields it not, may be reproved or chastised by the teacher ; and the preceptor offends not. For the sake of science, obedience to an instructor must also be yielded by others than a *Brâhmana* ; for they study ordinances or *human sciences*. This must also be understood.

## IX.

NA'REDA : — UNTIL he acquire the science, let the pupil diligently

ligently obey his preceptor; his conduct should be the same towards the preceptor's wife and his son.

2. *Afterwards*, performing the stated ceremonies on his return home, and giving to his instructor the gratuity of a teacher, let him return to his own house: this conduct is prescribed to the pupil.

By this a pupil is declared to be a servant.

The *Retnâcars*.

HERE the punishment of a pupil, if he do not yield obedience, is not ordained: hence, since it is not here directed, no amercement is *paid* to the king.

## X.

*Smṛiti*:—BUT in case of strife between teacher and pupil, father and son, husband and wife, or master and servant, their mutual litigation is not legal.

By this, judicial procedure, *in such cases*, is not forbidden;\* but MENU declares, that punishment may be inflicted by the teacher (XI). It appears, that, if it could not be borne, the acquisition of science would be prevented.

## XI.

MENU.—A WIFE, a son, a servant, a pupil, and a younger whole brother, may be corrected, when they commit faults, with a rope or the small shoot of a cane;†

2. But on the back part only of their bodies, and not on a noble part by any means.

“PERFORMING the stated ceremonies on his return home” (IX); performing the *Samâvartana* sacrifice, and giving the teacher's gratuity, for

\* I suspect the negative to be an error of the manuscript. 1.

† May I quote a maxim of royal authority, *Sadgurâdharâdharâ purâṇa*, p. 123, l. 11: Strike not, even with a bundle, a wife guilty of a hundred faults? 7.

the sake of *obtaining* perfect fruit from his own act of *studying*, let him return home to *assume* the order of a householder, or married man. Such is the sense of the text (IX 2).

A PUPIL is mentioned under *this* title of law to determine the rules respecting chastisement of a pupil by a teacher, and so forth.

## XII.

GO'TAMA:—THE correction of a pupil for ignorance or incapacity *should be given* with a small rope or shoot of a cane; the teacher shall be punished by the king, if he strike with any other instrument.

VIJNYA'NE'SWARA says; if a teacher, from an impulse of wrath, strike *his pupil* with a great staff on a noble part, then, should the pupil, hurt in a mode contrary to law, complain to the king, there exists a subject of litigation.

IF it be said, that this contradicts the text cited (X), VIJNYA'NE'SWARA replies; it is not intended to forbid important suits on the part of pupils and the like, for in some instances their suits are admitted; but the litigation of teachers and the rest is not laudable either in a moral or civil view; therefore pupils and others should, in the first instance, be discouraged by the king, or the court: this is the implied sense of the verse (X); but in very important cases, the suits of pupils and the rest may be entertained in the form mentioned.

BUT others hold, that the suit of a teacher against his pupil, a father against his son, a master against his servant, and, by parity of reasoning, a husband against his wife, is not legal, because the pupils and the rest are dependent on their teachers and so forth, and may be punished by them: the text (X) shows this very *rule*, and does not forbid the suit of a pupil and the rest against a teacher and so forth; for GO'TAMA directs, that a preceptor, ill treating his scholar, shall be punished (XII). The text in question (X) signifies, that the pupil should proceed, *in other matters*, with the

previous knowledge of his teacher. The meaning is, that a suit preferred before the king is irregular; and, preferred by the teacher against his pupil, is forbidden. But, if the pupil, or son, violate his duty, and the teacher, or father, being weak, is not able to correct him, it is consistent with common sense that he should then apply to the king; for by violating his duty the pupil, or son, absolutely becomes *pāśhetā* or irreligious.\* This they *also* hold.

THE suit of a teacher, if his gratuity be not paid, is not mentioned by any other *author*; but hell is *the pupil's fate*, if he pay not a gratuity to his *instructor* (Book II, Chapter III, v. XXXIV).

FROM the text *already cited* (IX 2) it appears, that so long, (until the *flat-tered ceremonies be performed*,) obedience is required, and the pupil is dependent on the teacher (v. VI, and Book II, Chapter IV, v. XV 2.). Therefore he should not go any where, nor consume any thing, without his preceptor's orders; and what he acquires by labour, should be delivered to the teacher.

### XIII.

YA'JNYAWALCYA:—WHEN called, let him study; and deliver what is gained, to him (namely to the teacher).

WHAT is given by him, may be consumed; what is acquired by labour, may not be given to another: but, if *either* paternal wealth, or property acquired by the pupil during his minority, be given away, unknown to the teacher, or notwithstanding his prohibition, it is *nevertheless* a valid gift; but there is offence in violating the prohibition.

LET him deliver what is gained, to the teacher (XIII); this is a moral ordinance; for it is placed under that head. Consequently duty is violated, if it be not delivered to the teacher; but he cannot forcibly take it: and, since the pupil is the owner of that property, even what is then received as alms, may, if the scholar give it away, be a legal donation. If this be

\* Literally, taking the marks of the four orders (as explained in Asana's dictionary); but otherwise explained in this work (Chapter II).

alleged, they say : the same rule is established in this case, as in that of learning arts (XX) ; the pupil is like a slave to his preceptor ; and during that period of *tutelage* is every way dependent. But according to JĪMUTA VĀHANA and others, it should be affirmed, that what is then acquired by labour, if it be given away, becomes a valid gift ; for *the case* is similar to *that* of a wife and the rest.

THE pupil must also perform other labour in his preceptor's house.

#### XIV.

YĀJNYAWALCYA:—LET him constantly promote his *teacher's* benefit by *every exertion* of mind, speech, body, and action.

AND such practice is shown, in many instances, in the *Mahābhārata* and other *works*.

#### XV.

YĀJNYAWALCYA—THOSE, who are endowed with memory, and who are void of malice, intelligent, pure, and auspicious, should be legally instructed, that they may be just, able, acquainted with what is good, and learned.

FROM this direction it should be deduced, that a pupil, endued with such qualities, and free from such defects, having undertaken to study, cannot properly be abandoned without a fault.

VIJNYĀNĒSWARA says ; *treating* of the pupil, apprentice, hireling, and commissioned servant, the conduct of the pupil has been first propounded by the text *already quoted* (XIII).

#### XVI.

VRĪHASPATI describes an apprentice:—ARTS, consisting of *work* in gold, husbandry and the like, and *the art* of dancing and the rest, are called human sciences ; let him, who studies these, perform work in his teacher's house.



IN the expression, "gold, husbandry, and the like," are comprehended *work in wood, traffick, and the rest*. Dancing and the like include singing and so forth. In the *Cbintāmeni* the text is read; "arts, as the manufacture of vessels of gold and the like, and the art of dancing and so forth, are called &c." In fact, skill in business, which requires study, but is different from sacred science, is human knowledge. This sense results from the text. He should perform, in the house of his preceptor or teacher, work relative to the art to be learned by him; as the manufacture of golden vessels, and the like, in the house of an instructor who works in gold: not labour of a different nature, as the thatching of a house and the like.

## XVII.

NA' REDA:—LET him, who wishes to acquire his own art, with the assent of his kinsmen, reside near an instructor, fixing a well ascertained period of apprenticeship:

2. Let the teacher instruct him, giving him a maintenance in his own house; and not employ him in other work, but treat him as a son.

"To acquire his own art;" the art suitable to his class. "A time, or period, ascertained" by the attestation of witnesses. "Not other work" but *that which is proper for instruction in the art*.

The Retnācara.

"LET him reside near his teacher" (*āchāryasya vased antē*): by this is expressed the derivation of apprentice (*antēvāsi*), or pupil for instruction in arts. "Giving him a maintenance:" the compound term may be explained, to whom subsistence is given. The teacher himself must allow a maintenance to his pupil: his own benefit is the performance of a duty, reputation gained, and some profit. In some places of the *Retnācara*, the reading is, "giving hire;" still a subsistence is meant by the word "hire."

IN like manner, if a pupil for the study of the *Vēdas* need a maintenance, it is proper that the teacher should give it. It is not mentioned in the law, because

because moral duty alone is the principal consideration of a student in the *Vēdas* : yet it should be done ; for otherwise duty is violated.

“ BUT treat him as a son” (XVII) ; not like a slave, employ him at pleasure.

### XVIII.

CA'TYA'YANA directs a penalty for employing *an apprentice* in other work : —HE, who does not instruct *his scholar* in the art, and causes *him* to perform other work, shall incur the first amercement ; and the pupil is therefore released.

“ HE, who does not instruct his apprentice in the art ;” the teacher, who, having promised instructions, but, either employing the scholar much in other work, or acting from the impulse of wrath, does not teach him the art, shall incur the first amercement ; and the pupil may forsake him, and go to another teacher.

THEN how is he required to perform work (XVI) ? Some reply ; it is not forbidden to require obedience from him : but it is forbidden to employ him in business inconsistent with instruction, and occupying much time ; such as travelling to many places, thatching a house, and the like. But others hold, that work, in the text of VRĪHASPATI (XVI), intends the business which is to be learned ; it corresponds with the text, “ the profit of whatever work he may there perform” (XX) : and he should be employed in such labour. But if the teacher instruct him to the best of his knowledge, and do not employ him in other work, then the pupil, forsaking his teacher and going to another, shall be chastised.

### XIX.

NĀREDA:—BUT he, who deserts his teacher though instructing him and not culpable, shall be compelled by forcible means to reside *with him*, and is liable to stripes and confinement.

" *Corporal punishment,*" blows and the like ; " *confinement,*" or restraint :  
 so a certain author *has explained the terms.*

The *Retnácara.*

" *CONFINEMENT ;*" binding.

The *Gbintámeni.*

FOR loss of life (*the literal sense of the first term*) would be incongruous. This is considered. The teacher should himself inflict the stripes or other punishment, according to law, not on a noble part by any means (XI 2), but with a small rope or shoot of a cane (XII). The same chastisement is proper for desertion, and for ignorance. The spiritual preceptor and pupil are similar to the teacher and apprentice, but are distinguished by the difference of *their* motives : the pupil studies the *Veda* on account of duty ; the apprentice learns an art for the sake of wealth. Thus some *interpret the law.*

OTHERS hold, that a pupil may be punished by the teacher, if the pupillage were undertaken with the assent of kinsmen ; for he has not tutorage, unless apprenticeship were agreed to : and here a lawsuit arises on application made to the king.

BUT in fact *it appears* from the mention of the assent of kinsmen, *that* the pupillage lasts so long as the kinsmen do not withdraw *the boy ; in the mean time* correction *may be given* by the teacher : but, if his kinsmen withdraw him, a suit may be maintained ; and if the pupil have no kinsmen, *still* it is inferred, that a lawsuit may arise on account of desertion.

IF, through an aptitude to learn, the pupil become perfectly instructed in his art before the expiration of his apprenticeship, he shall nevertheless serve his master the full time.

## XX.

NA'REDA:—THOUGH he have learned *his art*, the apprentice must fulfil his stipulated time : and the profit of his labour during that period shall belong to his teacher.

“ STIPULATED time,” the period agreed to. “ The profit of his labour ;” wages or hire, and the like.

The *Retnâcara*.

THE hire receivable, by the favour of the teacher, during the period of instruction ; in that the pupil has certainly ownership.

## XXI.

YA'JNYAWALKYA:—THOUGH he have acquired his art, the apprentice must reside in his master's house during the period stipulated, receiving his subsistence from the teacher, and giving to him the fruit of his art.

THE apprentice must reside in his teacher's house during the stipulated period ; that is, so long a time as was agreed to : *for instance*, “ I will reside in thy house four years to study the art of medicine.” *If such an agreement were made*, even though he have gained the requisite knowledge before the expiration of four years, still he must reside *there*. How shall he reside *there* ? The answer is, receiving subsistence from his teacher, and applying to his benefit the fruit of those instructions *he receives from him*. He must so reside *in his teacher's house*.

The *Mitâcshard*.

HERE it *should seem* from the expression, “ the profit of his labour ” &c. (XX), that the teacher has ownership even in what the pupil acquires by voluntary exertion in traffick and the like, independent of his art, and by agriculture or similar means, and by treasure-trove or other accident. It cannot be said, that it may belong to his father, under the texts cited in a former chapter (Book II, Chapter IV, v. LVI), because there are no grounds for selecting one rule in preference to the other. His kinsmen have assented to his apprenticeship (XVII) ; and, according to law, it is the duty of an apprentice to acquire wealth for his teacher. Nor should it be said, that the work meant (XX) is limited by the title, *under which the text is placed*, to the business to be learned. There is no authority for such a limited construction. † Thus some expound the law.

BUT others allege, as a custom, that the fruit of what is *done* through the means of the teacher, (*in consequence of instructions,*) belongs to him; but, in the case of treasure-trove or the like, the waif is taken by the pupil. According to JÍMU'TA VA'HANA, the pupil has, in every instance, a right to *retain* what is acquired by himself: this should be considered.

## XXII.

NÁREDA:—AT the *expiration of the period*, the apprentice, having acquired his art, and formally delivering to the teacher the best reward in his power, departs with *his* permission.

“ HAVING acquired his art :” this intimates that, if the art could not be learned in the time first stipulated, he should stay, again fixing a period *of further apprenticeship*; not that he should stay until the study be completed within the time first stipulated. For the stipulated period is shown to be *the principal consideration*, by directing the apprentice to fulfil his time even though he have learned *his art*. (XX).

WHEN the time, or stipulated period, is expired, *the apprentice departs*, having presented a gratuity to the teacher, *after formally* walking round him; and this is done as a token of respect: obtaining his approbation to the best of his power; giving the best reward in his power, and obtaining *his instructor's* approbation; or doing that, which is the best reward for the teacher. “ To the best of his power” refers to the reward.\*

THIS (*the apprentice*) is the second labourer, a *servant* for human knowledge (IV). A servant for love is included among slaves and will be *hereafter* mentioned. NÁREDA describes the third labourer, by the name of hired servant.

## XXIII.

NÁREDA:—LABOURERS should be considered as of three sorts; highest, middle and low: the hire of their labour should be proportioned to their strength and to the benefit derived from their exertions.

2. A SOLDIER is the highest of these; a servant in husbandry is middlemost; a carrier of burdens is lowest: this is the three fold distinction of hired servant.

“ *Bhāṭi*,” benefit. “ Hire of their labour;” the wages fixed for their labour.

The *Retnācara*.

CONSEQUENTLY wages should be given according to the strength of the servant, according to the work effected, and so forth: for instance, one *hired leader*, by his own exertion, repels a hundred hostile armies; another repels one foreign army; their wages should be proportioned to their power. “ Benefit;” particular effect of service, explained by the sage himself; “ a soldier is the highest of these.” Or *it may mean, that* soldiers should be distinguished according to their principal, or inferior charge; as the soldier posted in the rear. So, in regard to the man who thatches the house, or who collects the grass, or the like: their wages should be paid according to their work.

#### XXIV.

VRĪHASPATI: — THE servant for pay is declared to be of many sorts; another is the servant for a share *of the gain*. Of all, a low, a middle, and a high rank is propounded.

2. A SERVANT hired for a day, a month, a fortnight, six months, or a year, must perform the work engaged for: and he receives the promised *reward*.
3. THE soldier is the highest of these; the ploughman is the middlemost; the porter is declared the lowest, and so is a servant employed in the business of the household.
4. A SERVANT of the second description is declared to be one hired for a share *of the gain* in the service of a person living by agriculture or by *attendance on herds of cattle*: no doubt he shall receive *a share* of the grain produced, or of the milk.

THE servant for pay is of many sorts, or descriptions; a hireling, an agent, and the like: another servant for pay is called a labourer for a share of the gain. These are the servants for pay mentioned by VRĪHAS-PATI, in a former text (IV), for the labourer for a share of the produce is a servant for pay *given* in the form of a share. Of all the servants for pay, except the labourer for a share, a low, a middle, and a high rank is declared: this has been *also* mentioned by NĀ'ṚĒḌA (XXIII), and shall be explained.

HE, who undertakes service for one day, is a servant for a day. So a servant for a month. "Half," *in the text*, signifies half a month, or a fortnight; a servant for half a month or a fortnight so a servant for six months, and a servant for a year. "Each must perform the work engaged for," he must perform that very work, which the person stipulated when he hired *him* as a servant; and not, any other work. Thus, hired on a stipulation for bringing water, he need not carry burdens, nor bring wood from the forest, but hired on a stipulation for bringing fuel from the forest, he must fetch wood. In case of dispute, it must be determined by the *tenour of the compact*. But if they mutually consent to other employment, then every thing is proper by mutual agreement, no suit can be maintained at a subsequent time for the party has himself previously consented. But if a porter, hired to fetch wood from the forest, finds imminent danger to his life in that employment, he has a right to quit it, notwithstanding his previous agreement. If he undertook it, knowing the great risk of life, and afterwards, again hearing of the danger, or not hearing of it, recede, what is the rule in that case? In the case of imminent danger the employer cannot compel him, if he refuse to abide by his agreement. But this rule is not applicable to soldiers and the like; for their employment is connected with risk of life. This should be considered as consistent with reason.

"He receives the promised wages" (XXIV 2). When he stipulates less, or more wages, than are given by people in general for the same work, the stipulated hire is received under the authority of the text. If he stipulate more or less wages, than are proportioned to the work, that very hire should be received. But an agreement for less, or greater wages, unintentionally

tentionally made, either by deceit through false promises, or extorted by force or the like, is not valid, as stipulated interest, not specially and freely promised by the debtor, need not be paid (Book I, v. XXXVII). This should be admitted and is necessary · but greater favour depends on the will of the master

OF these servants for pay, the foldier is the highest *in rank* (XXIV 3). This is not exclusive; for it is proper also to consider a person skilled in accounts as included among servants of the first rank. A ploughman and servant in husbandry are ultimately the same · nor is this exclusive; for an architect and others are entitled to a place in the second rank. “ A porter &c.” (XXIV 3): this is similar, since there are *other* servants declared equal to him: “ and so is a servant employed in the business of the household” (XXIV 2); bringing things for the use of the household, and the like: he, who performs these various offices, is also a servant of the lowest rank: and others are also comprehended in the mode pointed out. Nor does it derogate from NA' REDA, that he has not mentioned the servant employed in the business of the household.

“ ANOTHER is the servant for a share of the gain:” what is thus mentioned (XXIV 1), separates two titles. The servant, to whom food and vesture are given, and the labourer, to whom *a share of the gain* is delivered, form the double title, as will be mentioned (LXVII): and that labourer for a share is declared to be the servant of persons living by agriculture or by herds of cattle. This again is general; there may be servants hired for a share *of the gain* by persons subsisting by *the manufacture* of cloths and the like, as weavers and others; and by persons subsisting by flocks of goats, *sheep* and the like. A servant for participation is one hired for the consideration of a share. This sense of the word the sage announces: “ the servant hired for a share of gain, in the service of a person living by agriculture, shall receive *a portion* of the grain produced; and in the service of a person living by herds of cattle, shall receive *a share* of the milk;” here “ share” must be supplied, according to the *Retnâcara*. What share? It will be mentioned in another place.

A COMMISSIONED servant is included by VRĪHASPATI among &c.



for pay. In regard to him also, the rule of high and low rank is to be understood, according to the circumstances of the case. But NA'REDA describes him as the fourth labourer, and different from the hireling.

## XXV.

NA'REDA:—HE, who shall be commissioned for affairs or for the superintendence of the family, should be considered as a commissioned servant; and he is *also* called a family-servant in some instances.

“*Things*,” affairs    These two *servants* are named, in judicial procedure, commissioner and family servant.

The *Retnācara*.

THE sense is, “commissioned” by the king, or other person, for affairs, such as the protection of the subjects, the receipt of his revenue, or the maintaining of an army for war and so forth, and by others also, for collecting the produce of the soil, or for the management of commodities bought or the like. The same should be understood of one appointed *to act for his principal* in a lawsuit. “Commissioned” over the family is obvious, though not mentioned by him (*by the author of the Retnācara*). he, who is appointed to provide the food and clothing of the family is a commissioned servant. “These two,” commissioned for affairs, and commissioned for the family. such is the meaning of the *gloss*

ARE they severally, or synonymously named commissioner and family-servant? Not the first; since commissioned for affairs would be the accepted sense of the term family-servant. Nor should it be affirmed, that this must be admitted on *the authority of the text*, for it may be otherwise applied and it is directed, at the time of affixing a meaning to a word, not to admit a sense by acceptance, when the derivative sense can be *used*.

*A Rule of Philosophy* —An accepted sense, being once admitted, excludes the derivative sense, but when proposed, it is inadmissible, if the derivative sense oppose it.

NOR should it be said, that here should be admitted a secondary sense without losing the literal signification, for that cannot be received unless there be some objection to the obvious meaning. Thus, "he," in the expression "he should be considered as a commissioned servant," being applicable to the officer commissioned for affairs, and to the servant commissioned for the family, both comprehended under this term *used* in the singular number, commissioner is a name for each of them, "and he," the servant commissioned for the family, as is obviously meant, is called a family-servant. This may be the sense of the text

NOR is the second construction *admissible*, that "one is a commissioned servant, the other, a family-servant" For the servants commissioned for the family, excluded from the name of commissioner, would be excluded from the subdivision of the subject, as proposed in former texts (III and V)

ON this point it is said, a secondary sense must be here partially admitted, and both be comprehended even under the term family-servant. Where the word cannot be pertinent without a secondary sense, such a meaning must be affixed, *but* how is it inserted in the text for that purpose? in the expression, "the cowpen is situated on the Ganges," and in similar instances, the word Ganges being explained in the secondary sense of its shore, the *Ganges*, or stream of water in the tract of BHAGIRATHA's car, is no included with the shore signified by the word Ganges. This argument is wrong, for the term is here employed in a secondary sense without losing the literal signification. This is meant in the *Retnucira*, and should be considered as accurate hence it is said, "*so named* in judicial procedure"

## XXVI.

NAREDA:—FOUR servants are declared to be those, who perform pure work; but they, who do impure work, are the slaves of fifteen sorts, *some properly so called, others improperly*. \*

\* This observation is added from Sir W. JONES'S translation of the text, as cited in the *Introduction* where it is attributed to V. K. BHASPATI

for pay. In regard to him also, the rule of high and low rank is to be understood, according to the circumstances of the case. But NA'REDA describes him as the fourth labourer, and different from the hireling.

## XXV.

NA'REDA:—HE, who shall be commissioned for affairs or for the superintendence of the family, should be considered as a commissioned servant; and he is *also* called a family-servant *in some instances*.

“*Things*,” affairs. These two *servants* are named, in judicial procedure, commissioner and family servant.

The *Reinacara*.

THE sense is, “commissioned” by the king, or other person, for affairs, such as the protection of the subjects, the receipt of his revenue, or the maintaining of an army for war and so forth; and by others also, for collecting the produce of the soil, or for the management of commodities bought or the like. The same should be understood of one appointed *to act for his principal* in a lawsuit. “Commissioned” over the family is obvious, though not mentioned by him (*by the author of the Reinacara*): he, who is appointed to provide the food and clothing of the family is a commissioned servant. “These two;” commissioned for affairs, and commissioned for the family: such is the meaning of *the gloss*.

ARE they severally, or synonymously named commissioner and family-servant? Not the first; since commissioned for affairs would be the accepted sense of the term family-servant. Nor should it be affirmed, that this must be admitted on *the authority of the text*; for it may be otherwise applied: and it is directed, at the time of affixing a meaning to a word, not to admit a sense by acceptation, when the derivative sense can be *used*.

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NOR should it be said, that here should be admitted a secondary sense without losing the literal signification, for that cannot be received unless there be some objection to the obvious meaning. Thus, "he," in the expression "he should be considered as a commissioned servant," being applicable to the officer commissioned for affairs, and to the servant commissioned for the family, both comprehended under this term *used* in the singular number, commissioner is a name for each of them, "and he," the servant commissioned for the family, as is obviously meant, is called a family-servant. This may be the sense of the text.

NOR is the second construction admissible, that "one is a commissioned servant, the other, a family-servant." For the servants commissioned for the family, excluded from the name of commissioner, would be excluded from the subdivision of the subject, as proposed in former texts (III and V).

ON this point it is said, a secondary sense must be here partially admitted, and both be comprehended even under the term family servant. Where the word cannot be pertinent without a secondary sense, such a meaning must be affixed, *but* how is it inserted in the text for that purpose? in the expression, "the cowpen is situated on the Ganges," and in similar instances, the word Ganges being explained in the secondary sense of its shore the *Ganges*, or stream of water in the tract of BHAGIRATHA's car, is not included with the shore signified by the word Ganges. This argument is wrong, for the term is here employed in a secondary sense without losing the literal signification. This is meant in the *Retnācira* and should be considered as accurate. hence it is said, "*so named* in judicial procedure

## XXVI

NAREDA —FOUR servants are declared to be those, who perform pure work, but they, who do impure work, are the slaves of fifteen foris, *some properly so called, others imbrocher* b. \*

\* This observation is added from Sir W. JONES's translation of the text as cited in the *Indica* of the *Indica* where it is attributed to V. R. BHASPATI.

2. WORK is declared to be of two sorts, impure and pure: impure work is assigned to the slave; pure work to the servant.

“ FOUR servants,” a pupil, an apprentice, a hired servant, and a commissioner.

“ To the servant,” to the pupil and the rest of four servants.

The *Retnâcara*.

“ THOSE who perform pure work.” consequently the pupil and the rest should not be employed in cleaning the house and the like. It appears from the ordinance, that even a hired servant should not perform that task. But if any person, allured by temporary hire, be willing to do such work, for one who has no slave and who is himself unable to perform it, may he be so employed? or should he be included in some one of the descriptions, which will be given, of slaves of fifteen sorts? He, who consents to do the work of a slave, must perform it. in this instance, there is no fault on the part of the master. Then why has this text been propounded? When servants are not willing to do the work of a slave, then their master may not forcibly compel them: but when slaves refuse to perform that work, he may compel those *slaves* by forcible means. The text should be considered as propounded for this purpose.

## XXVII

VRIHASPATI:—CLEANING the house, the gate-way, the necessary, and the road, removing the dirt, and rubbish, and all other impurities,

2. Attending the master at his pleasure, and rubbing his limbs, are to be considered as impure work, and all other work as pure.†

\* The authority is not named, but in the *San Âdhyâya*, and in the *Uttara* *da Çhâra*, it is immediately ascribed to VRIHASPATI, and here cited as NÂRADA.

† The text is not a text, but a translation. The text itself is translated freely.

THOUGH it be said in this text, that all other work is pure, yet there is no exclusion of other *work not specified*.

## XXVIII.

CA'TYA'YANA:—THE sons of slaves must absolutely do the work of removing urine and ordure, attending their naked master, and handling cows and the like.

THE *supposed* limitation in the preceding text is done away by the additional mention of attending a naked master and handling cows and the like: and it is confirmed, that the customary office of removing the dirt of the body and the like is comprehended *in the texts*. However applied, the rule is not infringed; since the texts are intended only as examples. \*

“ ATTENDANCE on the naked master ;” handing clothes to him.

The *Retndcara*.

“ ATTENDANCE on the naked master ;” rubbing his limbs while naked.

The *Párijáta*.

BOTH interpretations should be admitted; for they are proper. But, on the explanation given in the *Párijáta*, naked is unmeaning; for no other, than a slave, rubs the limbs of a master though he be not naked.

SOME remark, that, on a thorough examination of the texts, *it appears that*, where a person is hired, the performance of pure work constitutes a servant, and the performance of impure work constitutes a slave: and a hired servant, doing the impure work described by the text, should be considered as a slave. Others hold, that slavery depends on the particular relation of property; and service, solely on the engagement of the servant. If it be said, there is authority even over a servant; *they answer*, this authority is not a cause of similar dependence; it is the relation of command, *not of property*. Nor should it be objected, that a similar relation may extend also to a wife or a son. For they are distinguished; or that is barred by the epithet of servant: and many do not admit the hire of slaves. As for *making* the admitted difference

ference of dependence to constitute slavery, they deny it; for it would not extend to slaves born in the house, and so forth.

THESE four servants are called persons bound to obedience. NA'REDA now explains the slave, or fifth description of persons bound to obedience.

## XXIX.

NA'REDA:—ONE born of a female slave in the house of her master, one bought, one received by donation, one inherited from ancestors, one maintained in a famine, one pledged by a former master,

2. One relieved from great debt, one made captive in war, a slave won in a stake, one who has offered himself in this form "I am thine," an apostate from religious mendicity, a slave for a stipulated time,

3. One maintained in consideration of service, a slave for the sake of his bride, and one self-fold, are fifteen slaves declared by the law.

"BORN in the house;" born of a female slave in the house of her master. "Bought" for a price. "Received;" or acquired, by the acceptance of donation and the like. "Inherited;" a slave of the father, or other ancestor, passing by succession to the son, or other heir. "Maintained in a famine;" in a season not good, at a time, when provisions are dear, or, in such a year, during a dearth; then maintained: that is, whose life has been preserved for servitude by food then given. "Pledged by a master;" his own slave pledged by the master to a creditor, for a loan received, so he his slave during the period of the loan. "Relieved from great debt;" redeemed from his creditor's custody on account of a great debt, and therefore becoming a slave. "Made captive in war;" over whose life has been preserved by his consenting to slavery, when in danger of his life in battle; and thus acquired by the conqueror. "Won in a stake;" overcome after an agreement in this form, "if I be overcome in this contest, I am thy slave." Who has offered himself in this form.

"I am thine;" delivering himself in this form "I am thy slave," through desire of money or the like. "An apostate from religious mendicacy," quitting the state of a mendicant. "Stipulated," *slave* for a stipulated time; who has fixed a period in this form, "I am thy slave for so long a term," and so forth. "Self-fold," who has fold himself. These slaves of fifteen sorts are declared by NA'ĀRĒDĀ. The text is thus explained according to VIJAY-ĀNĒS'WARA, CHANDESWARA, VĀCHESPATI, and BHAVADĒVA.

"WON in a stake," won by gaming.

The *Pracāsa* and *Parīśatā*.

"BOUGHT" and "received" may also mean boys purchased or received for adoption, *but who have* become slaves through some failure in the form prescribed by the law. In that instance, "received" signifies given by the father and mother, and he, who is self-given, is one who has offered himself in this form "I am thine:" he will be mentioned by this *description*. "Maintained in a famine," and who has consented to slavery: but of him, who has not consented to become a slave, the servitude is not admitted by VIJAY-ĀNĒS'WARA; for he particularly mentions consent *as a requisite condition*: and that is proper, since there is no proof of dominion acquired by maintenance alone. Yet persons bought, or received, may become slaves, although they did not consent to it at the time; for they are in subjection, and cannot *now* become sons *after a failure in the form of adoption*.

If it be said, they should become servants, else, a *Brāhmaṇa* might become a slave, though his class be exempted from slavery: therefore persons bought, or received, if they have not consented to become slaves, should not perform *impure work*, such as attendance on their naked master and the like: the answer is, the slavery of a boy, who has consented to adoption, being admitted by a text cited in Part II (Book V, v. CLXXXII) if the *rites of adoption* be not duly performed, servitude in general does really occur also in the case of persons bought or received, *if the adoption fail*. In fact, since he is taken for adoption, he should perform the office of a son; but he becomes a slave, if he be excluded (*in consequence of a failure in the adoption*)



from the rites ordained by the *Veds*, such as obsequies or the like. This is proper.

“ PLEDGED by his master ” (XXXI): but he, who receives a loan on pledging himself, is of the same description, and he is a slave, if he have agreed to it for subsistence. but not otherwise, *for* he is a servant, if he have agreed to service *only*.

“ RELIEVED ” from debt this occurs in redemption from a debt due to another, and in remission of a debt due to *the master* himself, in consideration of the debtor’s becoming a slave but a purchase results from the remission of a debt due to the master himself. However, it is so explained by authors. “ Relieved from great debt ” *comprehends* release from distress of other kinds.

“ WOV in a stake: ” it is observed by authors, that *the verb* is used under the rule they quote, that verbs of this particular class are employed in the secondary passive But in fact it is also used in the primary passive, under another rule therefore, in a stake thus set, “ if I be overcome, I give thee that slave belonging to me,” the winner becomes the owner of the slave

A SLAVE, who offered himself in this form, “ I am thine,” is of two sorts; with or without, a stipulated time. Thus, “ so long as I serve thee as a slave, so much money shall be paid monthly,” or, “ I will serve thee, as a slave, one year.” in these forms are two sorts of slave offering himself in these words “ I am thine,” *one* for a stipulated period, and *the other* for an indefinite time. But the slave for a fixed term, as subsequently described, uses a similar form of speech.

THIS may be understood of the slave made\* by the person made, or adopted, as described by Book V, v C  
son made, but whose adoption is not com- ing to legal

Self, like a  
(V) A  
includ-

\* *Cr̥iśa*, or made, has been explained, for a stipulated  
Here proposed by the com-  
admi

ed under slaves made; how this interpretation can have been omitted by authors, may be questioned.

AN apostate mendicant is a slave to the king.

### XXX.

CA'TYA'YANA:—WHERE men of the three twice-born classes forsake religious mendicity, let the king banish a man of the sacerdotal class, and reduce to slavery a man of the military or commercial tribe.

MISRA and CHANDE'SWARA explain *the term used in the text*, the *Cshatra* and *Vis*, or *Cshatriya* and *Vaisya*, collectively. Thus a man of the sacerdotal class is slave to none; but the *Cshatriya* and *Vaisya* become slaves to the king.

### XXXI.

DACSHA:—If a man, after assuming religious mendicity, abide not by his duty, let the king cause him to be lacerated by the feet of dogs, and immediately banish him.

DEVIATION from his duty occurs when he takes a wife, like a householder; and in similar instances. That should be discussed under the title of banishment.

"A SLAVE for the sake of his bride" (XXIX 3): a man who acquiesces in slavery for the sake of love, as mentioned by VRĪHASPATI (IV 1).

### XXXII.

VRĪHASPATI defines that *slave*:—BUT the man, who cohabits with the female slave of another, should be considered as a slave for *the sake of his bride*; he must perform work for her master, like other slaves, or like servants for pay.

As a servant for pay (that is, a hireling), or as a slave, performs work for his own master, so must he serve his wife's master.

### XXXIII.

MENU:—THIRTEEN are slaves of seven sorts; one made captive under a standard, *or in battle*, one maintained in consideration of service, one born of a female slave in the house, one sold, or given, or inherited from ancestors, and one enslaved by way of punishment.

“MADE captive under a standard,” conquered in battle. As in the chapter concerning *Virāt*, (*in the Mahābhārata*), BHĪMAŚĒNA thus bespoke a king called SUSARMA, vanquished, during the war which arose from the seizure of a cow on the south of *Virāt*.

FOOL! if thou desirest life, hear from me the conditions: thou must declare before a select assembly, and before the multitude, “I am a slave.”

2. On these terms will I grant thee life. This is a settled rule for him, who is conquered in battle.

CONSEQUENTLY, since BHĪMA requires his declared acquiescence, one, who agrees to it, becomes a slave, not, every person conquered in battle *whether he take quarter or not* and this, *in the text of MENU*, comprehends persons won in a stake.

“MAINTAINED in consideration of service,” who has agreed to slavery in consideration of maintenance, whether in a season of scarcity or abundance. “Born in the house.” born of a female slave in the house. “Sold” by his father and mother, or by either of them, or “sold” by himself. “Given” by his father and mother, or by either of them, or self-given. and he, who agrees to slavery in consideration of relief from distress, is self-given, for he gives himself on account of the favour conferred in delivering him from distress. “Inherited from ancestors,” (literally paternal), descended in succession

cession from the father or other predecessor. "Enslaved by way of punishment:" who has agreed to become a slave to acquit a fine, under the text of MENU.

#### XXXIV.

MENU: — A MAN of the military, commercial, or servile class, who cannot pay a fine, shall discharge the debt by his labour: a priest shall discharge it by little and little.

BUT an apostate from religious mendicity is also enslaved by way of punishment; for CA'TYA'YANA directs, that a *Cshatriya* and *Vaisya* shall become slaves of the king, to atone for the offence of apostacy from religious mendicity (XXX).

IT must here be considered, that it does not appear, from that part of CA'TYA'YANA's text (let the king reduce to slavery a man of the military or commercial class), that the king shall make him his own slave: he may cause him to become the slave of another; for this would be no infraction of the rule. But, on the question, whose slave does the apostate from religious mendicity become? slavery to the king is supposed by CHANDE'SWARA to be denoted by the terms of CA'TYA'YANA's text. The meaning there is, let the king enslave him; on the question, to whom shall he be a slave? since this must be comprehended *in the text*, and since no other person is mentioned, he takes him as his own slave.

Is there not an inconsistency with the text of NA'REDA; for he further mentions the slave for the sake of his bride, and a slave pledged by his master (XXIX)? Some reply, the texts are intended to propound their servitude, not to enumerate the slaves; for they are so explained by VIJNYA'NE'S'WARA. The servitude of seven persons is shown in the text of MENU (XXXIII), *it is not implied* that others besides those seven are not slaves. His text precludes a less number; not a greater number: for an explanatory enumeration permits a greater number.

OTHERS hold, that a servant for the sake of his bride, acquiescing in

fervitude through love, and giving himself into slavery for the gratification of his lust, is included under "one given" (XXXIII): and in him, who is pledged by his master, the property of the creditor is not acknowledged, but usufruct with the assent of the debtor. After the stipulated period, if the debtor do not redeem a pledge *given* for a fixed time, it becomes the creditor's property: how *then* are the slaves described by NA' REDA comprehended in the text of MENU? but VIJNYA'NE'S'WARA admits the creditor's property in a pledge, even within the period of the mortgage; surely on his opinion, *they* are not *all* comprehended in MENU's text. *To this objection the answer is*, there is no proof of the creditor's property in a pledge within the period for which it is hypothecated; but, after that period, his property is acknowledged; and it ultimately becomes a secondary, or inferior, sale. Thus, if the agreement be in this form, "should I not redeem the slave at the expiration of the fifth year, this slave, and this property, belonging to me, shall be thine;" the principal sum being considered as the price, there is in fact the complete act of relinquishment at a subsequent time, after a prior receipt of the price. It must be admitted by VIJNYA'NE'S'WARA and the rest, *that it means pledged* for the payment of a debt due to the man himself; for redemption from a debt to another is implied by "one relieved from great debt" (XXIX).

Thus the texts of MENU and NA' REDA correspond: but NA' REDA has mentioned fifteen sorts as an enlarged explanation, and to form the *necessary* distinctions in regard to the enfranchisement of slaves.

## S E C T I O N II.

### ON EMANCIPATION FROM SLAVERY.

#### A R T I C L E I.

##### ON ENFRANCHISEMENT OF SLAVES.

###### XXXV.

NA' REDA :—OF those *slaves* the first four (*one born in the house, one bought, one received, and one inherited*) are not of right released from slavery: unless they be *emancipated* by the indulgence of their masters, their servitude is hereditary.

2. THAT low man, who, being independent, sells himself, is the vilest of slaves; he also cannot be released from slavery.

*Literally* “there;” that is, among those slaves; the first quadruple set is *not emancipated*; collectively, one born of a female slave in the house, one bought, one received in donation or the like, and one inherited from ancestors: these cannot be released, unless they be emancipated by a master, whose life has been endangered, *but has been saved by the slave*; for the enfranchisement of slaves of all sorts, in that case, will be mentioned.

“INDULGENCE” is explained in the *Retnácara*, affection. Consequently the slave born in the house, and the rest, may be liberated, if the master be satisfied: but not otherwise. Since one maintained in a famine and the rest are not comprehended, in the text of NA' REDA, under slaves received in donation and the like, they may be liberated. But it should also be inferred, that a boy, received for adoption as a son given, and ultimately becoming a slave through a failure in *the forms of adoption*, is not liberated without favour; since he also is one received *in donation*.

“INDEPENDENT” (XXXV 2); explained in the *Retnácara*, his own master. Consequently there is no fault on the part of a dependent person, subject to his father and mother.

“He also cannot be released from slavery” (XXXV 2): that is, one, who sold himself, cannot be released from slavery. Hence emancipation is denied to five *slaves*. The separate mention of one bought and one self-sold is intended to denote a greater offence in the person who sells himself; but there is no offence on his part, if he sell himself for a religious purpose.

*Márcandéya purána*:— If I enter the flames unknown to the *Chándála*, I shall again become his slave in another birth.

THIS is a reflection of the universal monarch HERIS'CHANDRE, who had become the slave of a *Chándála* to pay the sacrificial fee, after giving his whole property to the holy sage VIS'WA'MITRA, and who wished to commit himself alive to the flames, with his wife, through affliction at the accidental death of his infant son RO'HITA'S'WA. “Unknown to the *Chándála* &c:” that is, since a slave is dependent in *all* acts generally, he is not liberated even by voluntary death.

ON this MISRA remarks, that “the speech of HERIS'CHANDRE regards the misconduct of a slave; else he could never be released from slavery *under any circumstances*.” It should be considered, that a slave is liberated by death; *but*, since it is shown by implication, in the *Márcandéya-purána*, that a slave is dependent even in regard to *life and death*, his suicide, though allowed by the law, would produce immoral consequences; hence, as a man is debtor to his creditor even in another birth, so he would become the slave of his former master. Yet, if his death happen by the act of God, he would be liberated from slavery; for there is no proof of the state of slavery continuing in another birth, and the connexion of servitude is *in general* limited to the period of life. As for the observation, that else he could not be released from slavery, it should be considered, that, by the favour of deities, he may be released from slavery, if he adhere to his duty. All this regards another world; there is not much use in further discussing the question.

## XXXVI.

MENU :—A `Súdra, though emancipated by his master, is not released from a state of servitude ; for of a state, which is natural to him, by whom can he be divested ?

THE meaning is, even by the owner's favour, a `Súdra, born of a female slave in the house, or otherwise included in the quadruple set, or *become* a servant of the lowest rank, cannot be released.

AND a slave is not released from servitude without favour. There is no inconsistency, if this be applied to others, besides a `Súdra, but born of a female slave in the house, or the like.

The *Retra ara*.

EMANCIPATED by him, to whom he had become a slave by capture in war or the like, a `Sudra is not released from a state of servitude to *Bráhmaṇas*. Since servitude is natural to him, who can divest him of a state of slavery proper to the servile class ? Hence it is necessary, that obedience be paid by a `Sudra to a *Bráhmaṇa*, or twice-born man. This is intended, else the subsequent enumeration of slaves would be nugatory.

CULLÚ'CABHATTA.

WHEN some *Bráhmaṇa*, becoming very poor, emancipates a slave, is he not liberated ? As a son, so a slave should not be forsaken. When, in very great distress, a man releases a slave, still, although the slave any how provide his own subsistence by other work, he must return when his master recalls him, and perform the duties of servitude the text is intended for this purpose. It is implied in CULLÚ'CABHATTA's exposition, that, if the `Sudra say, " because I have been abandoned by thee, therefore I will not do thee service," then the king shall compel him to *discharge the duties of servitude*. Else the subsequent enumeration of slaves would be nugatory. Such is the meaning. If the sense of the ordinance be, " since he belongs to the servile class, he is the slave of twice-born men, therefore the king shall cause him to be employed in service, however reluctant," then the particular allusion of this text to one made captive under a standard, and to



one maintained in consideration of service, would be unmeaning: for the servitude of others, besides those made captives under a standard and the like, results even from their servile class. It must however be considered, that the text, *which enumerates slaves* (XXXIII), can also be applied to others besides *Ṣudras*.

## XXXVII.

MENU:—BOTH him of the military, and him of the commercial class, if distressed for a livelihood, let some wealthy *Bráhmāna* support, obliging them without harshness to discharge their several duties.

2. A *Bráhmāna*, who, by his power and through avarice, shall cause twice-born men, girt with the sacrificial thread, to perform servile acts, without their consent, shall be fined by the king six hundred *panas*.

It should not be objected, that the servile employment of others than *Ṣudras* being forbidden by these texts of MENU, slavery is limited to this class; and the slavery of one made captive under a standard should be established for *Ṣudras* only: and the sense of these texts is, that a *Bráhmāna* should with tenderness support a *Cshatriya* or *Vaisya* distressed for a livelihood, but employ them in their own several duties; that is, employing a *Cshatriya* in military service or the like, and employing a *Vaisya* in commerce and so forth, he should maintain them. Consequently, this sense of the text being also inferred as a matter of course, the text is delivered as a rigid precept. It appears therefore, that a wealthy *Bráhmāna*, having occasion for the service of a soldier or the like, should he, from anger or any other motive, omit to support those persons, shall be amerced. He must oblige the *Cshatriya* and *Vaisya* to discharge their several duties, not to perform servile acts. This also is a rigid precept, which the legislator delivers in the second verse. If he cause twice-born men, girt with the sacrificial thread, to perform servile acts without their consent, he shall be fined six hundred *panas*: and this, in the objector's opinion, agrees with CULLU'CABHATTA'S exposition.

It is answered, the expression, "without their consent," admits servitude with their consent: and servile acts may be performed for a *Bráhma*na, by a man of the military or commercial class, from religious motives. As is related in the *Mahábhárata* and other works, that CRÍṢṢNÁ, an incarnation of the divinity, who took upon himself the human body, and accepted the customs of the world, did present water to wash the feet of *Bráhma*nas. The author of the *Retnácara* also observes on the words, "cannot be released from slavery" (XXXV), that they regard others besides *Súdras*, but born of a female slave in the house and the like.

If an independent *Bráhma*na employ a *Vaiśya* and a *Súdra*\*, hired as servants for military duties or for commerce or the like, in washing his feet, against their will, he shall be amerced. Such is the sense, as appears from the use of the term, "by his power" (XXXVII 2).

THEN, if a *Súdra*, at any time, do not perform servile acts for a *Bráhma*na, ought he to be forcibly employed in his service? It appears from the expression, "cannot be released from a state of servitude," that the state of servitude, which has already occurred, cannot be annulled. But, in this case, the man has not become a slave; what then shall be annulled? This should be considered.

It should not be objected, that the state of servitude was born with him, because that is intimated by the words, a state which is natural to him (XXXVI); and accordingly the servitude even of one unbought is admitted by the following text.

### XXXVIII.

MENU: — BUT a man of the servile class, whether bought or unbought, he may compel to perform servile duty: because such a man was created by the self-existent for the purpose of serving *Bráhma*nas.

THE expression, "a state which is natural to him," has no such meaning as

\* So the MS. It should be *Cśatrya* or *Vaiśya*.

*supposed in the objection.* What does it mean? When a *Súdra* is born, is servitude to all *men* born with him? Or servitude to no one in particular, but general, and *by which* he afterwards becomes the slave of him who takes him? Not the first; were it so, that *Súdra* might be taken as a slave by all twice-born men; and if any *Súdra*, not serving any person, were accidentally starved or the like, it would be a sin on the part of all twice-born men: a person cannot compel any *Súdra*, *whom he meets on the road*, to perform servile duty. Nor is the second *supposition* right; for, servitude requiring a permanent connexion, there cannot be a state of servitude without a master *to be served*: consequently it is proved, that the son of a female slave forsaken by her master is not, at the moment of his birth, slave to any man. Even though a state of servitude were admitted to belong to that *Súdra*, there would be no use in *thus supposing* a perfect, but unconnected, servitude; for, even though he were a slave generally, yet, unless he be received *in donation or otherwise* by any one man, he cannot be forcibly seized by him.

On this point the *best* opinion is this; as property in gold, silver, and other effects received, may be devested by gift, sale, or other alienation; but not the dominion over a wife, though received like gold or the like; (for a husband and wife are not divorced by desertion or neglect;) so a slave also is not emancipated. But that is technical, not actual: for, during the period of desertion, there is no sin on the part of his master in not supporting him; and his master has no power over wealth *then* acquired by him. "A state natural to him" (XXXVI) is mentioned as a cause; and "natural" signifies produced at the creation, when the servile class was produced; *namely*, his *natural* subsistence by servile attendance.

If any slave, emancipated by his master, has undertaken servile attendance on some other person, and afterwards the former master claims him; what is the rule in that case? He belongs to the second master, because, in fact, he accepted *his service* at the very moment, when his *former* servitude was ceasing. What is said of a *Bráhmāna* compelling a man of the servile class to perform menial offices (XXXVIII), is intended to authorize the servitude of a *Súdra*, after forbidding that of a *Cshātrīya* and a *Vaiśya*. By the expression "compel him to perform servile duty," is declared the propriety of

employing a `Súdra in menial offices, whether bought or unbought: the word "bought" implies slave in general; "unbought" denotes hired servant and the like; consequently there is no offence in employing him on slavish work, though he be a servant *only*. This is expressly declared.

UNTIL a `Súdra, emancipated by his master, be taken by another, as thus explained, he may be remanded: and a Cshatriya and Vaishya may be employed in servile duties with their consent: they may be released from servitude by the favour of their master, and cannot be again seized without their own consent. A master employing a `Súdra, whether he be a hired, or a commissioned servant, in menial offices, shall not be amerced; but if he employ a Cshatriya or Vaishya in servile duties, against their will, he shall be amerced. Such is the concise statement of *the law*.

THAT one born of a female slave in the house, one bought, one received in donation, and one inherited from ancestors cannot be released from slavery, has been declared: NA'REDA next declares that one, who gave himself in this form, "I am thine," cannot be released from slavery.

### XXXIX.

NA'REDA:—OVER the slave, who, having given himself in this form, "I am thine," goes to another, the *second master* does not acquire *absolute dominion*: at pleasure the former owner may reclaim him.

THIS must be understood of a slave, who goes of his own accord, without *emancipation* by the favour of his master.

"SLAVE;" *literally* one not his own master. "If he go to another person;" if he go to become a slave; in that case the former master may claim that slave: and the other master, though he have received him, does not obtain him *as a slave*. But emancipated by the favour of his master, he may be released from slavery. This should be affirmed; else it would be unequal, that one born in the house and the like may be released from slavery, and that one, who offered himself in this form, "I am thine," should be incapable of freedom.

IT may be *admitted*, that by their master's consent, a *Cshatriya* and a *Vaiśya*, who have voluntarily undertaken servitude, may be released from slavery, and be received by another ; but a *Śūdra* may not be taken by another master ; for it is declared by MENU, that a *Śūdra*, though emancipated by his master, is not released from a state of servitude. This inference is denied. Since there is no proof of the former master's property after emancipation, an unowned slave may be received : and, a second property arising, both have not a distinct ownership. The title of both is absolutely similar ; but the right of the second master subsists, because the slave has not been emancipated by him ; therefore, without his consent, the former owner is prevented by this text (XXXIX) from seizing the slave.

IT should not be objected, that the text of MENU (XXXVI) shows the former owner's property in a slave, though forsaken by him ; hence a second master acquires no property in a slave still appertaining to a former owner : for one peculiar right precludes another of the same nature. Property in an enfranchised slave, causing dependence and the like, is not literally admitted. That *another* may take him again into service, though enfranchised, is implied in the text of MENU (XXXVI) ; else, an enfranchised slave not being forsaken by his former master, the *Śūdra* would be deprived of a livelihood, since he could not be received by another : or the household-er would be guilty of sin in not supporting the slave, though voluntarily dismissed ; since there could be no relinquishment annulling his property.

IF it be admitted, that a right, called ownership, over the liberated slave, *subsists* to authorize the master to remand his slave, wherever he reside, *even* after he has found a livelihood by alms and the like, still there is nothing inconsistent with the right of the second master ; for his property is of a different nature. But, in fact, no different title is admitted ; for it may be explained by *supposing* the property annulled ; and *another interpretation* would be inconsistent with *the notion* of a second master. The text of MENU (XXXVI) intimates the taking of *him* again into service, after emancipation from his last master, as well as from his first ; for no distinction is expressed. Thus, according to authors, any slave, emancipated by his master, received by another, and emancipated by him also, may be taken by his former master.

ON the opinion, in which the slave for a stipulated time is opposed to him who gives himself in this form, "I am thine," this text (XXXIX) regards a slave for an indefinite term, as well as a slave for a definite time whilst the period *stipulated* is unexpired. A slave for a definite term is liberated after the period expires. But, according to authors, the slave for a stipulated term, as distinct from him who offered himself in this form "I am thine," is not intended by this text (XXXIX). This should be admitted.

## XL.

NA'REDA:—THEY, who are stolen and sold by thieves, and they, who are enslaved by force, should be liberated by the king: their slavery is not admitted.

STOLEN by a robber in their infancy, or by a thief, and sold by him, but remaining silent at the time of the sale through apprehension of ill treatment from the robber, and afterwards telling the circumstances to obtain their freedom, *these* slaves should be released; and, if the master refuse their discharge, they shall be liberated by the king: and they, who are enslaved by force, (*Sûdras*; and *Cshatriyas*, or *Vaisyas*, employed in servile work without their consent,) shall also be released by the king.

If a potent robber, seizing any person, sell him; and the person sold remain silent; in that case he ought not to be liberated by the king, because the purchase was *made* through the fault of the person sold. This is denied; for, whether he have consented or not, the validity of his act under the impulse of fear is not admitted by YA'JNYAWALCYA (Book II, Chapter IV, v. LVIII).

## XLI.

YA'JNYAWALCYA:—ONE enslaved by force, and also one sold by robbers, is released from slavery.

THIS text of YA'JNYAWALCYA (XLI) is cited by VIJNYA'NESWA'RA in this manner; "the legislator declares the law applicable to the slave and apprentice."

apprentice." Consequently his meaning is, that one forcibly taken as a pupil is also released. But an apprentice is not suggested by the literal sense of the text; for he is not a slave, nor is he bought. However, a pupil is comprehended in the rule by parity of reasoning; and the obvious argument, noticed by this author, is also observed by us: moreover, should any person, forcibly taking one fit to receive instruction in arts, compel him to reside in his house, and employ him in work; or if any person, not having authority over the boy, to please a teacher of arts, deliver to him another's child (without the knowledge of the father and mother) to receive instructions in an art, in those cases also his apprenticeship is null. This is implied. VIJNYA'NE'SWARA's meaning is this; it appears from the legislator's propounding the duty of an apprentice, after this text (XLI), by the verse cited in the preceding section (XXI), that an apprentice is also implied in this text.

BUT others say, that VIJNYA'NE'SWARA, author of a commentary on the collected texts of YA'JNYAWALKYA, having premised the five descriptions of persons bound to obedience as delivered by NA'REDA, and not finding any mention of pupil, and of hired and commissioned servants, in this chapter of YA'JNYAWALKYA, says, "he declares the particular law respecting slaves and apprentices:" therefore one verse (XLI) relates to slaves; the other verse (XXI) relates to apprentices.

THIS might be suitable, if it were not repeated, when citing the other verse (XXI), "he declares the duties of an apprentice." In fact, from his use of the term "applicable," ("he declares the particular law applicable to the slave and apprentice:") the commentator hints another opinion: it may, or it may not, be so; *still* compulsive apprenticeship and the like must be null under the general text (Book II, Chapter II, v. X). This we deem a proper *exposition*.

"AND also one sold by robbers" (XLI): it is the opinion of VIJNYA'NE'SWARA, that under the word "also," one pledged and one given are likewise released: and it should be understood, that a person won in a stake from a robber should also be discharged.

NA'REDA declares the mode of emancipation for all slaves.

### XLII.

NA REDA : — AMONG those, whoever rescues his master from imminent danger of his life, shall be released from slavery, and shall receive the share of a son.

AMONG those slaves of fifteen sorts, whoever delivers his master from danger of life, is released from slavery, whether he be a slave inherited from ancestors, or be of another description. This is the general cause of enfranchisement of all slaves, as mentioned in the *Mutasharâ*, on explaining the text of YA'JNYAWALCYA (XLIV), " he, who saves the life of his master attacked by robbers, by a tiger, or the like, should be emancipated " Therefore the construction is, among these slaves above described, (one born of a female slave in the house, one bought, one received in donation, one inherited, and one, who offered himself in this form, " I am thine,") whoever rescues his master &c. This consequently obviates the bad interpretation, that one maintained in a famine, or the like, is not released from slavery on rescuing his master from danger of life, for, in comparison with one maintained in a famine, the servitude of one inherited or bought is more rigidly permanent. and the emancipation of one, who saves his master's life, is mentioned generally by YA'JNYAWALCYA.

WITHOUT the consent of *his master* to his emancipation, he is not released from servitude on saving his master's life, this consent alone effects his release from slavery. such is the induction of common sense, for preservation of life, and every other service, is incumbent on a slave bought. If this be affirmed, the answer is, no such rule can be established without *authority* from the text of a sage, or of an *esteemed* author.

A MASTER and servant, skilled in swimming, are crossing a river to go to another village. The master's apparel accidentally becoming loose, his power of *swimming* is lost, while he is busied in making fast his apparel; and he is unable to pass the remaining part of the river, measured by five or ten cubits *from the shore*, he is, however, landed by the servant, who had



crossed before him, with the help of a boat or the like found on the shore. In this case is he released from servitude, or not? It should not be affirmed, that he is released from servitude, in this case, under the authority of the ordinance: for it would be inconsistent with approved usage.

On this point, some observe, that, where a slave, neglecting his own safety, and highly valuing his master's life, rescues him from the encounter of a tiger or the like, and is himself preserved by the act of God; in that case he is released from slavery. But if some person attempt to destroy a man by poison, and the slave of that man, discovering it, prevent him from eating the poisoned food; or if the master intended to go out of his house, not aware of a tiger standing at the door, but his slave, seeing the tiger, prevent him; in these, and similar cases, it may be admitted, that he is not released from servitude. This should be examined.

“AND shall receive the share of a son” (XLII); like a son, he shall receive a share of that man's wealth. That the slave should, like a son, take the heritage of a *Bráhmāna*, seems contrary to reason; but should be allowed, because it is admitted by VIJNYĀNEŚVARA. Thus, in the chapter on the administration of justice, or forms of judicial procedure, after premising slaves from the womb, and the rest, he says, “since it is declared by NĀRADA, that whoever rescues his master from imminent danger, shall be released (XLII), what should bar his suit against his master, if he be not released, or if the share of a son be not given?” Therefore no doubt should be entertained on what is expressed by the text, in the sense *thus* investigated by authors. However, in some places no such usage subsists on the occasion of benefits received from slaves: and therefore, in whatever country it is not customary to give a son's share to a slave, in that country, if a benefit be received from any slave, the share of a son should not be given to him (Book I, v. XCVIII.)

In the *Retasara* and other works this text (XLII) is cited; but nothing particular is said respecting it.

## XLIII.

NA'REDA :—ONE maintained in a famine is released from servitude, on giving a pair of oxen; for what was consumed in a famine, is not discharged by labour *alone*.

“ONE maintained in a famine,” or saved from death by food supplied during a scarcity of provisions, is liberated by the gift of a pair of oxen. The reason is assigned; what was consumed during the famine, is not discharged by his labour *alone*, but requires some other payment: and that, under the authority of the text, is the gift of a pair of oxen. Such is the construction according to CHANDE'SWARA. Consequently one maintained in a famine, desiring emancipation from servitude, must give a pair of oxen; so much is the consideration of his enfranchisement under the authority of the text: and what was consumed during the famine, is absolutely discharged by the work already performed by him; but, on account of the difficulties of that season, and the great value of things *then* consumed, a pair of oxen must also be given. Such is CHANDE'SWARA'S meaning.

BUT MISRA holds, that the sense is this; he is released on giving what he consumed during the famine, together with a pair of oxen. Consequently he must repay what he used during the dearth. By directing payment of what he consumed, it is not meant, that the value, it then bore, should be made good; but, if it cannot be repaid in kind, it should be paid by an equivalent for the price borne at the time of emancipation.

Is not what he then consumed, repaid by his labour? The sage replies; “it is not discharged by his labour” (XLIII). It is also said in the *Muñcisharā*, in a gloss on the text of YA'JNYAWALKYA (XLIV), ‘one maintained in a famine, and one maintained in consideration of service, are emancipated on relinquishing their maintenance, repaying so much as has been consumed out of the master's property from the commencement of *their* servitude.’ The meaning is this; it is intimated by the text, that property ceases on relinquishing maintenance, *that is*, food or eatables: but, if one maintained in consideration of service, do not eat his master's food for the space of seven or ten days in the month of *Āśvini* (*a season of religious abstinence*)

*abstinence*) that is no relinquishment of maintenance. Since he has no property in food, which ought not to be eaten, that can be no loss of maintenance. It therefore appears, that relinquishment of maintenance consists in relinquishing food to which he has a right.

SINCE a slave has no wealth exclusively his own (LI and LII), is it not impossible for him to repay what he has consumed? Although this objection may be made under the opinion, in which it is contended that slaves are incapable of property, yet the slave's ownership of wealth given through affection, like that of women over female property, must be universally acknowledged.

OTHERS hold, that the text of YA'JNYAWALKYA (XLIV) does not relate to one maintained in a famine, because the gift of a pair of oxen is not mentioned, but relates to one maintained in consideration of service: for it accords with a text of NA'KEDA (XLVIII), and in that text the word "immediately" shows his emancipation on the very day, when he desires his release from servitude. (It should not be objected, that the word "immediately," signifying that day, denotes his enfranchisement on the very day, when he relinquishes maintenance, *with, or without, demanding his discharge*. That word would be superfluous, since the same sense might be obtained without it: *and it must therefore signify the day when he claims his release*.) In the present instance some consideration, such as the gift of a pair of oxen, is required for emancipation from servitude. Even though one maintained in a famine were not distinguished from one maintained in consideration of service, still, being distinguished from a servant for a period depending on agreement, he must give a pair of oxen besides relinquishing his maintenance. By the word "relinquish" (XLIV) is here meant not accepting it.

SINCE one maintained in a famine is similar to this servant, the exposition delivered by CHANDÉSWARA on the words, "for what was consumed &c." (XLIII) should be admitted in this case. Nor should it be objected, that it appears from the word liquidate in the following text, that both must repay what they have consumed.

## XLIV

*Yogi-YA'JNYAWALCYA*:—HE, who saves his master's life, is released from servitude, and so are some slaves on relinquishing subsistence, and others on liquidating that debt, for which they became slaves.

SAVING his master's life and payment of debt are distinct from the direction for a pair of oxen to be given by one maintained in a famine. However, there is no difficulty, *say these lawyers*, in explaining "liquidate" as signifying, that he is emancipated by the gift of a pair of oxen, and by liquidating what he consumed during the season of scarcity.

## XLV.

*NA'REDA*:—ONE pledged is also released, when his master redeems him by discharging the debt, but, if the creditor take him in payment of his demand, he becomes a purchased slave.

WHEN the master, whose slave he is, or his own father, redeems him, or, when he redeems himself, then a slave pledged is also released. But, if he, to whom the slave is pledged, take him, he is afterwards a purchased slave, that is, he remains as one bought. So the *Retnācara*. He becomes a purchased slave, because he is sold by his master for a price paid in the remission of the debt and he, who sells himself, is in effect bought. Hence these two cannot be released from slavery, unless by the favour of the master, or by saving his life.

## XLVI

*NA'REDA*:—PAYING the debt with interest, a debtor is released from servitude, and a slave for a fixed period is also emancipated by fulfilling the stipulated term.

REPAYING, with interest, so much as had been paid, through his master, to a creditor, and for which he consented to become a slave. Hence it appears, according to some lawyers, that interest must be again paid, else

cable, if her master have no legitimate or adopted son; for in that case she need not be enfranchised. This construction agrees with the *Pracāśa*, *Pārijāta* and *Retnācara*; and MISRA holds the same opinion.

NA'RLDA declares the form of manumission,

### L.

NA'REDA:—LET the benevolent man, who desires to emancipate his own slave, take a vessel of water from his shoulder, and instantly break it;

2. Sprinkling his head with water containing rice and flowers, and thrice calling him free, *let the master* dismiss him with his face towards the east:

3. Thenceforward let him be called "one cherished by his master's favour:" his food may be eaten, and his favours accepted; and he is respected by worthy men.

"BENEVOLENT;" affectionate, or satisfied. It comprehends a person emancipating the slave who has preserved his life, or the like; for no other form of manumission has been ordained. Or the manumission of a slave, who has preserved his master's life, should be performed by the master with affection and benevolence.

"TAKE a vessel of water from his shoulder, and instantly break it;" by this is figured the discontinuance of his office of carrying water. From the cessation of that duty, it appears, under the authority of the text, that all servile duties are discontinued. The sprinkling of water with flowers and rice is auspicious, and is ordained as a part of the ceremony of manumission. "Thrice declaring him free" is intended to confirm his emancipation. Dismissal with his face towards the east is auspicious, and is ordained, *but* as an *unnecessary* part of the ceremony. Thenceforward he shall be called by the appellation of "*freedman or one cherished by his master's favour.*"

The *Retnācara*.

OTHERS

OTHERS state this meaning ; his appellation formerly was, " the slave of this man ;" but now he should be called " cherished by this man's favour."

" His food may be eaten : " it appears from the text, that, if a man of the commercial class happen to be the slave of a *Cshatriya*, his food should not be shared by other men of the commercial class ; but after manumission, it may be shared by them : and so, in other cases. " And his favours accepted : " it appears, that favours should not be conferred by such a *Vaisya* before manumission ; but now, after manumission, they may be accepted. Some lawyers hold, that his favours could not be received, because he was incapable of property ; but now, since he may possess property, being free, his favours may be accepted.

## LI.

NA'REDA :—THESE three persons, a wife, a slave, and a son, have *in general* no wealth exclusively their own : the wealth, which they may gain, is *regularly* acquired for the man, to whom they belong.

## LII.

MENU :—THREE persons, a wife, a son, and a slave, are declared by law to have *in general* no wealth exclusively their own : the wealth, which they may earn, is *regularly* acquired for the man, to whom they belong.\*

2. A *Bráhmāna* may seize without hesitation, if he be distressed for a subsistence, the goods of his *Súdra* slave : for, as that slave can have no property, his master may take his goods.

" EARN ; " acquire.

The *Retnácara*.

THE sense is, ' doing acts whence property may be obtained.' Such acts are the labours of husbandry and the like. But CULLU'CABHATTA says,

\* Already cited in Book II, Chapter IV, v. LVI.

this merely illustrates the dependence of a wife and the rest, in respect of property acquired by themselves; for it will be mentioned, that a wife has exclusive property of six kinds; and a wife being qualified for acts in which property must be used, a woman, with *the* assent of her husband, may even use wealth common to them both. \* VIJNYA'NE'SWARA holds the same opinion; and so do JÍMUTA'-VA'HANA and others. But it does not appear to be admitted by CHANDE'SWARA, VA'CHESPATI MISRA, and others; for they otherwise explain these, and the texts which will be cited. The mode of reconciling the difficulties suggested by CUL-  
LÚCABHATTA will be delivered in its place.

THE sense of the second verse (LII 2), according to CULLÚCABHATTA, is, that a *Bráhmāna* master, without hesitation, with confidence, without apprehension of punishment from the king, may take the goods of his slave if he be distressed: the sage subjoins a *lax* complimentary phrase; whatever belongs to his slave, belongs to the master; the slave, though he be the owner of the goods, has not exclusive dominion over them. Therefore, under the authority of the text, the master, though he forcibly seize goods belonging to another (*that is, belonging to his slave*), shall not be amerced.

BUT according to the opinion, in which it is maintained, that a slave is absolutely incapable of property, "without hesitation" is explained 'with confidence;' in this case, any *Bráhmāna* whosoever can only receive from a *Śūdra* slave effects ascertained not to belong to his master; but *he must* not accept goods which are not *so* ascertained: the sage declares it an offence to accept them without such an ascertainment, "he can have no property &c.:" thus, if he receive the goods of a stranger from *the hands* of a deficient person, the validity of the gift may be questioned.

### LIII.

DE'VALA, cited in the *Retnácara* and *Chintámēnt*:—AFTER the death of the father, sons may divide his estate; but they have no ownership or *full dominion*, while a faultless father lives.†

2. MENU has declared, that, like them, women have no dominion over any thing, while their husbands live, nor slaves, while their master survives.

It appears from the expression, "like them," that the want of dominion of a son, whose father is living, over the paternal estate, of a wife, while her husband survives, and of a slave, during the life of his master, are similar. What is this want of dominion? Since it is intimated by the two conditions (while the husband lives, and while the master exists), that both have *dominion or ownership* after the death of the husband and master, even at that time dominion, or ownership, subsists, but is in fact a mere entity. In expounding the text of NARADA (Book II, Chapter IV, v LIII 2), persons not their own masters are explained by authors, 'sons, slaves, and the like.' But want of dominion is an absolute want of independence. Accordingly that term is used instead of the word dependence and slaves and the rest cannot, at that time, give away their own acquired property.

It should not be argued, that this text relates to wealth acquired by the master of the slave, or by the husband of the wife. The exception could not be pertinent, unless their dominion or ownership might have been supposed, for an exception implies a prior general rule. Since the independence of a son might be supposed, because he has ownership of his father's wealth (Book V, Chapter I Section I, Art I), the text is propounded for the purpose of denying that independence. Thus some expound the law.

"OVER any thing," since independence in regard to female property will be deduced from particular texts, and from the reason of the law, this dependence regards all things except that. The wife's and the slave's want of property abovementioned (LII) is a privation different from that of female property and the like, or it may be understood as dependence in regard to property different therefrom. Wives and the rest may accomplish rites, for which money is required, by using female property and the like.

#### LIV

CA'TYA'YANA.—WHATEVER goods belong to a slave, his master



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#### LIV.

CA'TYA'YANA :—WHATEVER goods belong to a slave, his master

ter is declared by law to have dominion over them; but that master has no right to the goods, which are acquired by publick sale.

THIS reading (*pracāśa-vicreyāt*, or publick sale) occurs in some places of the *Retnācara*: but in the *Cbintāmenī* the reading is, through favour or by sale (*prasāda vicreyāt*); and this may be well expounded. What is sold, through favour, by the master to the slave; or what is obtained by the slave, from his master, by sale (that is, by purchase), or obtained by him from his master through favour, belongs to the slave, not to his owner. So the *Retnācara*. MISRA expounds it: what is obtained by the slave from his master's favour, or by sale from him, belongs to that slave: his master has no right to it. As women are independent in regard to female property, so are slaves also in regard to property acquired by favour. It appears from the literal sense of the text, that slaves are independent in regard to what has been given through favour by the master, or by another person. But MISRA and the rest say, by the master's favour.

THE *Pracāśa* and *Pāryāta* concur in reading *na swāmi dhanam arbati*, the master has no right to the goods. LACSHMĪDHARA reads *tat swāmi dhanam arbati*, their master or owner has a right to the goods. According to that reading, "their owner" is meant of the slave. So the *Retnācara*.

#### LV.

CA'TYA'YANA:—A FREE woman, or one, who is not a slave of the same master (for the word *adāsī* may bear either sense\*), becoming the bride of a slave, also becomes a slave to her husband's owner; for her husband is her lord, and that lord is subject to a master.

*Literally*, "not a female slave;" that is, not mancipiated to the master of him, whose bride she becomes: for this interpretation is necessary from the

\* *Adāsī* } the gl is hardly notices the more obvious interpretation of free woman without a reference to the *Viṇayaśāstra*, I should not have discovered, that both interpretations are intended by the commentators cited on this text.

connexion implied in the word slave ; and, a master of the male slave being supposed, it is proper to interpret the text, not mancipated to him. The expression “ she becomes a slave,” also implies the same connexion. In this exposition, the *Vivāda Retnācara* and *Vivāda Chintāmenī* concur : and the female slave of another, or a free woman not the slave of any man, becoming the bride of a mancipated servant, is enslaved to his master. In that case the female slave of another becomes enslaved to the master of the male slave, with the assent of her former master.

“ Not a female slave :” if the negation show one different from a female slave generally (*that is, a free woman*), and if it be said, that she, who is the slave of any other person, is not different from a female slave generally, (*that is, she is not a free woman,*) still there may be a general difference from slavery, because she is released from servitude by *her master's* consent to her marriage. In effect there is no difference *between these explications*. Such is the opinion intimated in the *Retnācara*.

BUT MISRA writes, that her marriage is in fact a cause of emancipation from servitude to her former master. Hence this text belongs to that title (*the title of emancipation*) ; and proves the *second* servitude to be formed with the consent of her master. In the case of her marriage without his consent, as in the marriage of a *chéticā* or female attendant, the former master's property is not lost.

## ARTICLE II.

## ON PERSONS LIABLE TO SLAVERY.

## LVI.

NA'REDA:—IN the inverse order of the classes slavery is not legal, excepting *the case of one, who forfakes his duty: in this respect* the condition of a slave is held similar to *that of a wife.*

“ IN the inverse order;” thus a *Vaiśya* cannot be the slave of a *śūdra*; nor a *Āśvatriya*, of a *Vaiśya*; and so forth. An illustration is given; “ similar to *the condition of a wife:*” as a woman of the commercial class cannot be the wife of a *śūdra*, nor a woman of the military class be the wife of a *Vaiśya*; so in this case also. “ Excepting one, who forfakes his duty;” by this it is expressed, that one, who forfakes the duty of his own order, may become a slave even in the inverse gradation of classes. Such is the opinion of MISRA and CHANDE'SWARA. Consequently an apostate *Vaiśya*, may voluntarily become the slave of a *śūdra*, and so forth; but, if he do not agree to become the slave of any person in particular, the king shall make him his own slave, as already mentioned.

ON this point an observation should be made: the servitude of him alone, who forfakes the *professed* duty of his “ order,” is expressly allowed in the inverse gradation of classes; is the servitude even of others, than a *Brāhmaṇa*, who forsake the duty of their “ class,” illegal in the inverse gradation? for how can the expression, “ except one, who forfakes his duty,” bear both senses.

## LVII.

CA'TYA'YANA:—BHRĪGU admits the servitude of one, who, being his own master, gives himself, as *the marriage of a wife self-given is acknowledged*: slavery should be limited to three classes; never can a *Brāhmaṇa* become a slave.

2. *The servitude* of men of the military, commercial, and servile classes, who have forfeited their independence, may be in the direct, not in the inverse, order of the classes.
3. BUT even a man of equal class must not reduce a *Bráhma*na to slavery; yet a mild and learned man may employ in labour one inferior to himself in those qualities.
4. STILL let not the highest twice-born man perform impure work; for the glory of a king is obliterated by the slavery of a *Bráhma*na.
5. THE law permits the servitude of men of the military, commercial, and servile classes, to one of an equal class, on some accounts; but on no account let a man compel a *Bráhma*na to perform servile acts.

“ NEVER a *Bráhma*na” (LVII 1): the slavery of a *Bráhma*na is universally forbidden: “ as in the case of a wife.” He elucidates the precept: “ in the direct order of the classes, &c.” Men of the military and other tribes, accidentally forfeiting their freedom and independence, may become slaves in the direct order of the classes. This construction is suggested by preceding terms. Though the servitude of a *Bráhma*na be universally prohibited, he repeats the prohibition for the sake of particular explanation; “ but even a man of equal class &c.” Or the servitude of other classes, in the direct order, is declared; as there is no class superior to a *Bráhma*na, his servitude to a man of an equal class might be supposed: the sage obviates that doubt. “ But even a man of equal class &c.” (LVII 3); by this it is implied, that the servitude of *Cshatriyas* and the rest, to men of equal class, is permitted. He subjoins a particular rule in respect of a *Bráhma*na: “ a mild and learned man &c.,” such a man, reducing to servitude a *Bráhma*na inferior in respect of virtue and learning, may not compel him to perform impure work, such as removing urine or ordure; but he may employ him in pure work, such as sweeping a temple or the like. But the king should never reduce a *Bráhma*na to slavery:

the sage therefore says, the king's glory would be obliterated. Or the expression is general; his glory would be lost, even if a *Bráhmāna* be enslaved by others. This intimates disgrace. Hence the servitude even of a willing *Bráhmāna* should not be permitted; for *the king* himself would suffer thereby.

By forbidding the servitude of a *Bráhmāna*, no objection is implied to his serving as an agent, in collecting the revenue of a village or the like. It should not be said, that even the office of an agent, being service, is forbidden, because MENU ordains, "never let him (a *Bráhmāna*) subsist by *Swavṛitti*;"\* and he himself explains it, "Service is named *Swavṛitti*, or *dogliving*, and of course he (a *Bráhmāna*) must by all means avoid it;"† which is expounded by the learned, service or acts producing gratification only, *not religious merit*. From the declaration contained in the following text, that a *priest, becoming the king's servant*, is not a true *Bráhmāna*, (or, which is the same thing, that the priest offends,) no fault on the part of his master is established.

**‘SA‘TA‘TAPA :—**THOSE untrue *Bráhmanas* are declared by holy sages, acquainted with the principles of things, to be of six sorts: the first of them is a servant of the king; the second, a buyer and seller.

SOME hold, that a *Bráhmāna*, may, with his own consent, be employed as a commissioned servant; but not, without his consent: for the appropriate fine would be thereby incurred.

“THE law permits &c.” (LV 5): equal class there comprehends equal qualities. Thus a *Cshatriya*, a *Vaisya* and a *‘Súdra* may be employed as slaves by men of equal class, even though these be only equal in virtue: such is the law in respect of those classes. But a *Bráhmāna* can never be the slave of one *merely* equal in virtue.

The *Párijāta* and *HELΛ‘YUDHA*.

A *Brábmāna*, who follows the duties of the military, commercial, or servile class, bearing arms, practising husbandry, commerce and the like, or performing service, can never employ a *Brábmāna* in a servile duty.

LACSHMI'DHERA.

BUT CHANDE'SWARA assents to both constructions.

"THEIR several duties" (XXXVII 1) are explained in the *Retnácara*, the duties ordained for the military and commercial classes. They are maintained in consideration of such work. But, if a *Brábmāna* cause them to perform servile acts, the same legislator declares a penalty (XXXVII 2). A *Brábmāna*, who, by his power, shall cause twice-born men, girt with the sacrificial thread, (or virtuous and learned,) to perform servile acts without their consent, shall be fined by the king six hundred *panas*. This is the sense according to the *Retnácara*. By "twice-born men" are meant the *Brábmāna*, *Cshatriya*, and *Vaisya*. But, with their consent, there is no objection to the performance of servile acts by men of the military and commercial classes.

BUT a man of the servile class, whether bought or unbought, he may compel to perform servile duty (XXXIII): whether bought or unbought, he may compel him to perform impure work.

The *Retnácara*.

#### LVIII.

VISHNU:—HE, who employs a man of the most elevated class in servile duty, shall be fined in the highest amercement.

"A MAN of the most elevated class" is explained in the *Cbintámeni*, a man of the sacerdotal tribe. Others think there is no difficulty in assigning such a punishment to the man, who employs in servile duty, one of a higher class, than his own.

IN the case of one, who is not his own master, dominion and servitude occur in the inverse order of the classes; as in the story of HERISCHANDRE,



recorded in the *Mārcardēya-purāna*: accordingly the term, "his own master," is used by CA'TYA'YANA and others, when prohibiting servitude in the inverse order of the classes.

CHANDESWARA.

IT should be considered, that the expression, "his own master," is thus used in the text of CA'TYA'YANA (LVII), "one, who, being his own master, gives himself." The servitude of one, who is not his own master, in the inverse order of the classes, may be thus understood, when a *Cśatriya* delivers his own *Vaiśya* slave to be the mancipated servant of a *Sudra*; then *one, who is not his own master, becomes a slave in the inverse order of the classes.*

\*

### LIX.

CA'TYA'YANA:—HE, who seizes a woman of the sacerdotal class, he, who sells her, and he, who enslaves a woman of family impelled by lust,

2. Or causes her to be approached by another, shall be amerced; and that *enslavement* is null.

THERE is a slight difference in the reading according to the *Retnācara* and *Chrtarant*.\* "Impelled by lust" is explained in the *Retnācara*, with her own consent through desire. Both authors explain the text, "he, who enslaves a woman of family voluntarily offering herself, or who delivers her to another, shall be fined." Authors have not exhibited the *other* interpretation, "he, who enslaves a woman of family impelled by lust, (*that is*, unable to resist the impulse of desire, and *therefore* yielding her person,) shall be fined." Nor is it noticed, that this is inconsistent with AMER'A's interpretation of a woman of family, 'a woman, who preserves the *honour* of her family.'

"AND that is null" (LIX 2). that enslavement is null and void. Thus it is incidentally mentioned, that she is of course released from slavery.

\* In the *Retnācara*, the text is read *Chrtarant* *et* *Chrtarant*, in the *Chrtarant*, *Chrtarant* *et* *Chrtarant*. This variation does not affect the sense.

## LX.

CA'RYA'YANA:—THE man, who treats as a slave the nurse of an infant child, or a free woman, or the wife of his dependant, incurs the first amercement.

2. AND he, who attempts to sell an obedient female slave, though she resist the sale, and though he be not distressed but able to subsist, shall pay a fine of two hundred *panas*.

“ THE nurse of an infant child,” who nourishes that infant at her breast.  
 “ A free woman,” intrusted to him, or who has become a servant for maintenance. “ His dependant;” his servant. “ Though she resist;” though she say, “ I ought not to be sold.”

The *Ratnâcara*.

It appears, that the nurse of an infant, though she be a slave, should not be so treated: for “ free woman,” *subsequently mentioned*, denotes an independent woman. VA'CHESPATI MISRA' clearly explains it: “ the nurse of an infant,” though she be a slave; that is, one who gives her breast to an infant: “ a free woman;” one, who serves for subsistence and the like: if they do not consent to be sold, the *seller incurs* the first amercement, or a fine of two hundred and fifty *panas*.

“ AN obedient female slave ” (LX 2); from this it appears, that there is no objection to the sale of one whose conduct is vicious. It also appears from the term, “ though he be not distressed,” that there is no objection to the sale, if he be distressed for subsistence; and from the expression, “ able to subsist,” that there is no objection to the sale, if he be unable to subsist otherwise, though the season be not calamitous.

## SECTION III.

## ON WAGES AND HIRE.

## LXI

NA' REDA:—THE rule and the act of payment, and nonpayment, of the wages or hire of servants are *now* declared; called in law nonpayment of wages or hire.

THE title of law, called breach of promised obedience, has been already propounded, that, which is called nonpayment of wages or hire, is now delivered. Considering breach of promised obedience as a branch of nonpayment of wages, MENU has not separately propounded it, or breach of promised obedience falls under the miscellaneous or supplementary title.

THE rule and act of payment and nonpayment both *constitute the title of* nonpayment of wages or hire. The rule of payment, ("wages or hire should be paid,") and the act of payment the rule of nonpayment, ("wages or hire should not be paid,") and the act of withholding payment *these* are *comprehended in* nonpayment of wages or hire.

VIJNYA'NE'SWARA reads, "the consecutive rule of payment and nonpayment of wages to servants is declared," and he expounds it, the consecutive rule of payment, and consecutive rule of nonpayment, will be delivered in the following verses, under *the title of* nonpayment of wages or hire.

## LXII

NA' REDA.—LET the master, for whom work is performed, pay wages to the servant, according to their agreement, at the beginning, the middle, or end of his labours, as may be settled between them:

2. Wages not being stipulated, let the factor, the herdsman, and the servant in husbandry, *respectively*, receive a tenth part of the profit on goods sold, of the milk, and of the grain.

“ THE master, for whom work is performed ;” *literally* the master of the work. According to their agreement ; as was stipulated. At the beginning, the middle, or end of the labour.

The *Retnācara*.

CONSEQUENTLY the meaning is, at the beginning, the middle, or end of the labour, as was settled between them ; the wages shall be paid at the period agreed on. But, if none were settled, any one of those periods may be the term of payment : and, if the wages be not paid even at the third period, application should be made to the king.

OTHERS hold, that payment should be made by him, who shares the *produce of labour*, at the beginning, the middle, or the end of it. According to their opinion, it is intimated, that, if payment be not made, at those periods respectively, by them who share the produce of labour, recourse to the king is allowed, and so forth.

SUCCESSIVELY, five parts at the commencement, seven at the middle, and twenty-eight at the end of the labour.

The *Pārijāta*.

ACCORDING to this opinion, dividing the whole of the wages agreed for, into forty parts, he should pay five at the commencement of the labour, and so forth. Whence the author has deduced a division into forty parts, and the successive payment of five parts &c. should be inquired. At present, an agreement for paying wages at the end of the month is very customary.

“ MILK,” *literally* the feed of cows (LXII 2) ; meaning the best produce of kine, *which is* milk.

The *Retnācara*.

## LXIII.

YA'JNYAWALCYA: — HE, who causes work to be performed without fixing the wages, shall be compelled by the king to give a tenth part of the *profit arising from* commerce, cattle, or grain.

THE master, who causes work to be performed in commerce, attendance on cattle, or agriculture, without fixing the wages of his servant, shall be compelled by the king to pay him a tenth part of the *profit arising* therefrom.

The *Retnācara*.

VIJNYA'NE'SWARA gives the same *exposition*.

## LXIV.

YA'JNYAWALCYA:—THE will of the master *determines the wages* of him, who transgresses time and place, and of him, who does the work otherwise *than was stipulated*: but more shall be paid, if more be done.

A SERVANT, who works at a different time and place from that which is proper, or otherwise than was agreed, by doing less or the like, receives wages at the will and pleasure of his master: but if he do more work on his master's requisition, he receives greater wages.

The *Retnacara*.

THE second verse is cited by VIJNYA'NE'SWARA, with this observation; “the sage speaks of one, who does not act according to *his master's* orders.” VIJNYA'NE'SWARA's meaning is this: though he see a proper time and place for the sale of the commodity, if *the factor*, through insolence or the like, do not sell it; or if he accept less profit, thinking that time and place would cause him much trouble; let the master pay him what wages he pleases, not the full hire. Again; if he obtain greater profit by his own selection of time and place, a greater reward, than was previously stipulated, shall be given by the master to the servant

WHEN greater profit is obtained by his own selection of time and place (that is, by his own exertion), then only a greater reward shall be given; not if the greater profit were caused by *circumstances of* time and place, *without any exertion on his part*. For, were it so, less wages being paid to one who obtained less profit, and greater wages to one who obtained ample profit, the *direction for* receiving the full hire would be absurd: and the master is entitled to the greater profit obtained on his goods at the proper season.

OTHERS explain time and place in this manner: a servant receives wages determined by the will of his master, if he deviate from the time or place thus prescribed; "build a wall in the month of *Cārticī*;" or, "construct a boat on the shore of the Ganges."

## LXV.

YA'JNYAWALCYA:—ACCORDING to the work performed by a servant, though the whole task imposed might be too much for both *master and servant together*, must wages be given; if either of them could have performed it, *and it be performed*, let the promised reward be paid.

THIS text is intended for a rule in the case of a *śervāot*, whose work and hire are thus stipulated; "ten pieces of money shall be received for building this wall." By the expression, "even by both," is also implied "by many:" if it could not be performed by any one; or if the work be not completed by reason of sickness or the like; then wages must be given in proportion to the work done, as determined by arbitrators; in proportion to the work, which each servant has performed, let the master pay him wages. Neither shall the ten pieces of money be paid, as had been promised; nor shall payment be withheld for the work partially done. If the work can be performed; if it be performed by both, or by many servants, the promised or stipulated recompense shall be paid, and divided amongst them. Neither shall the whole reward promised be paid to each; nor shall each be paid in proportion to his work. Such is the opinion of VIJNYAÑESVARA.

HERE 'wages in proportion to his work' do not signify in proportion to the

the part of the work *done* and to the *whole* wages ; but a recompence to be paid according to the number of days : for VIJNYA'NE'SWARA, in the latter part of *his gloss*, means daily hire, by the term 'in proportion to work.'

THOUGH the whole task (which could only be performed by many persons) could not be accomplished by both *master and servant together*, wages must be given in proportion to the work done ; but, if it could have been performed by both master or servant together, or by either of them, in that case the fine prescribed must be paid. Such is the sense of the text ; and that *fine* will be declared in its place.

The *Retnâcara*.

THE meaning of the gloss is, if one or two persons erroneously undertake to perform, on stipulated wages, a task which could *only* be performed by many, the servant shall certainly receive the proper hire of his labour, though the work be not completed. But, if it could have been accomplished by the master or servant, then, should it remain unperformed in consequence of neglect or the like, the servant shall pay the fine prescribed.

BOTH interpretations may be admitted. In the *Pâryâta*, the text is expounded, " if the task require the labour of both *master and servant*, the " servant shall receive wages in proportion to the work performed by him ; " if the task could be performed *by the servant alone*, and it be performed, " let the promised reward be paid." This interpretation of both parts of the text is omitted by the other two commentators.

#### LXVI.

VRĪHASPATI:—LET the man, who guides the ploughshare, have a third or a fifth part of the grain, if no special agreement be made.

THE disjunctive " or " separates two cases declared in the following text.

#### LXVII.

VRĪHASPATI:—LET the ploughman, to whom food and ves-  
ture

ture are given, take a fifth, and let him, who is supported by the profit *alone*, receive a third part of the grain produced.

“ SUPPORTED by profit,” by the fruit of labour, by the grain produced and the like: meaning him, who has no such allowance of food and vesture.

A TENTH part, as directed by NA' REDA (LXII 2), is assigned to a servant different from the ploughman.

THE *Retnâcara*,

IN this exposition, the *Chintâment* concurs. The meaning is this; the hire mentioned is allowed to a servant employed in cutting grafs preparatory to tillage. Or the text of NA' REDA may relate to pulse and the like, which require sowing and watching only, *not tillage*.

#### LXVIII.

APASTAMBA:—A SERVANT in tillage, who abandons his work, shall be beaten with a staff: so shall a herdsman, *who neglects his duty*, and his own cattle shall be seized.

A SERVANT in tillage, or ploughman, who abandons his work or abandons, shall be beaten with a staff. So shall a *negligent* herdsman, and moreover the herdsman's cattle shall be seized.

The *Chintâment* and *Retnâcara*.

#### LXIX.

Vriddha MENU:—The wages of *seamen* shall be such, as are usually given by men, who understand sea voyages, and who know countries, and seasons, and commodities; unless there be a special agreement.

“ MEN, who understand sea voyages,” meaning generally persons well acquainted with commercial affairs.

The *Retnâcara*.



THE *Chintāmeni* in fact gives a similar exposition. It is consequently the author's opinion, as some lawyers remark, that this, with the tenth part of the profit directed by NA'REDA and YA'JNYAWALKYA (LXII 2 and LXIII), constitutes an alternative.

BUT others hold, that this text concerns the wages of seamen because it mentions sea voyages. In other cases, the wages shall be a tenth part of the profit; but the wages of seamen shall be the same which are *usually* given, by merchants trafficking by sea, to their servants; or if the wages, have been previously settled, they shall be paid *accordingly*. By the restriction of "men, who know countries, seasons and commodities," it is implied, that wages determined by any person, whose intellect is disturbed, shall not be paid.

#### LXX.

NA'REDA:—THE implements of work, and whatever is intrusted to servants for their master's business, should be diligently preserved; not wickedly neglected by any means.

"IMPLEMENTS of work" (the tie of the yoke and other implements of husbandry), and "what is committed to servants for their master's business" (such as grain and the like for agriculture) should be diligently kept by the servants, not wickedly or knavishly neglected.

The *Retnācara*.

"AGRICULTURE," in this gloss, signifies 'husbandry and the like:' for NA'REDA has premised the factor, the herdsman, and the servant in husbandry (LXII 2).

"THE implements of work:" the tie of the yoke and the like, which are necessary or useful in work, and which are intrusted to the servants for the business proposed (be it agriculture or any other occupation), must be diligently kept by the servants. If they be destroyed even by the act of God, *let* in consequence of the servant's neglect, it is a fault on the part of that servant. This induction seems just.

## LXXI.

VRĪHASPATI:—If the servant do not perform any part of his master's business, he forfeits his wages; and may afterwards be sued *for a fine*:

2. And, if a servant, having received his wages, perform not his work, though able to do it, he shall pay twice the amount as a fine *to the king*; and *the full amount of those wages to his master*.

If a servant able to perform his task, having undertaken to execute work required by his master, do not perform any part of it (that is, not the smallest part of it); in that case he forfeits his wages. He loses the amount of the wages verbally promised. Does it mean, "he shall pay that amount;" since this corresponds with the text of YA'JNYAWALCYA (LXXII)? No; for that is signified by the expression, "and may afterwards be sued;" *literally* a contest subsists. By "contest" is meant a lawsuit: and by saying, that a lawsuit afterwards subsists, a fine is intimated; and that fine should be deduced from the text of YA'JNYAWALCYA (LXXII).

"AND if a servant &c." (LXXI 2): since he has actually received wages, he shall pay twice the amount as a fine to the king; and their full amount to his master.

## LXXII.

YA'JNYAWALCYA:—A SERVANT, who desists from working after he has received his wages, shall pay twice their amount; and their full amount *only*, if he have not received them: the implements of husbandry must be diligently kept by the servants.

He shall pay twice the amount of those wages, *in the first case*; and their full amount, (not more than was agreed; not twice their amount;) *in the second*. Therefore twice the amount of the wages shall be paid by him, who

who begins the work, and then desists from it after receiving his wages; and the full amount *only*, if he have not received them.

“ THE implements of husbandry” *namely* the spade, the ploughshare, or the like, must be diligently kept or preserved by the servants; that is, by the ploughmen and the rest.

The *Retnâcara*.

THE payment of the full amount, or of twice the amount of his wages, should be understood as a fine to the king. “ The implements must be diligently kept,” as also directed by NA’REDA (LXX); this should be understood of a servant employed in labour.

VIJNYA’NE’S’VARA, after stating this exposition, proposes another construction of the last hemistich, in this manner; “ or he shall be forcibly compelled to perform his work, after paying him the wages promised,” as directed by the following text of NA’REDA.

#### LXXIII.

NA’REDA:—A SERVANT, who refuses to perform the work he has undertaken, shall be compelled to fulfil his agreement, first paying him his wages; but, if he persist in his refusal after receiving his wages, he shall forfeit twice their amount.

#### LXXIV.

CATYA’YANA:—HE who begins, but does not perform, his task, shall by force be compelled to finish it; if he refuse to do so, he incurs an amercement.

#### LXXV.

VRĪHASPATI:—HE, who has promised to perform work and does it not, shall be compelled even by forcible means; and if he *still* refuse to complete it, he shall be fined two hundred *panas* of copper.

THE

THIS promise, or agreement, from the correspondence of the text of CA'TYA'YANA (LXXIV), extends to the commencement of the work.

The *Retnācara*,

THE texts must be distributed to different cases, for the purpose of reconciling the *seeming* contradiction between this fine of two hundred *panas*, and the fine of eight *criṣṇalas* or *raśticās*, directed in a text which will be quoted from MENU (LXXVI): and their inconsistency with the text of YA'JNYAWALKYA, which directs a fine equal to the amount of the wages (LXXII), must also be explained.

For this purpose, some hold, that, if a man, not having received his wages, go elsewhere through avarice, he shall be fined their full amount; if, through indolence, he do not perform the work, two hundred *panas*; but, if he do not begin the work, eight *criṣṇalas* or *raśticās*. Others think, he shall be made to pay the full amount, in the case of wages settled by contract; and the fine is two hundred *panas*, and the like, in the case of wages by the month or the like. Others again affirm, that twice the amount of the hire is paid to the master, and two hundred *panas* to the king: and in like manner, the full amount of the wages, twice their amount, the seventh part and so forth (LXXXVII) are payable to the master; and the two hundred *panas* and other fines, to the king.

If it be said, that in a text above quoted (LXXI) a forfeiture of wages is ordained, which is inconsistent with the direction for compelling the servant to perform the work (LXXV); it is reconciled from the rule propounded by CA'TYA'YANA (LXXIV): paying his wages, he may by force compel him; but if he still refuse to perform it, he incurs the forfeiture of his wages, and an amercement.

#### LXXVI.

MENU: — THAT hired servant or workman, who, not from any disorder but from insolence, fails to perform his work according to his agreement, shall be fined eight *criṣṇalas* or *raśticās* of gold, and his wages or hire shall not be paid.

“ NOT from any disorder ;” not from the act of God or of the king, by which he might be disabled from performing it.

The *Retnacara*.

### LXXVII.

MENU explains *crīṣhnala*:—THE very small mote, which may be discerned in a sunbeam passing through a lattice, is the least visible quantity, and men call it a *trasarēnu*:

2. Eight of those *trasarēnus* are supposed equal in weight to one minute poppy seed ; three of those seeds are equal to one black mustard seed ; and three of those last, to a white mustard seed :

3. Six white mustard seeds are equal to a middle sized barley corn ; three such barley corns to one *crīṣhnala* ; five *crīṣhnalas*, or *raśhicās*, of gold, are one *māśha*, and sixteen such *māśhas*, one *suverna*.

THE whole meaning is, that a *crīṣhna's* is a quantity of gold weighing one *raśhicā*, or seed of the *ganjā*.\*

CULLU'CA BHATTA says, servants shall be fined eight *crīṣhnalas* or *raśhicās* of gold, and the like, according to the work. By the term “ and the like” must be understood *raśhicās* of silver, copper, or other metals. He thinks the denominations, as far as *crīṣhnalas*, are common to all metals, and the name of *suverna* only, peculiar to gold.

THE same legislator declares the rule, when a servant, from disease, not from infelice, fails in performing the work.

### LXXVIII.

MENU:—YET, whether he be sick or well, if the work stipulated be not performed *by himself, or by another for him*, his

whole wages are forfeited, though the work want but a little of being complete.

If he do not perform it himself, or by means of another. “ Though it want but a little ;” though a trifle only be unfinished.

The *Retnācara*.

HAVING abandoned his work on account of sickness, if he do not complete it when recovered, no wages shall be paid for the work performed, although a trifle only remain *to be done*.

CULLŪCABHATTA.

HERE, and in the text of NA'REDA (LXXIX), the whole wages are mentioned,

#### LXXIX.

NA'REDA:—HE who is hired for a time, and leaves his work before the expiration of the full term, shall forfeit all his wages: *but*, if he desist by the fault of his master, he shall receive as much as was stipulated.

THEREFORE, if he leave the work by his own fault, no wages whatever shall be paid ; but if he desist by the fault of his master, before the full time has elapsed, he shall receive so much wages as were stipulated.

The *Retnācara*.

OTHERS say, the text of MENU (LXXVIII) concerns wages settled by contract ; thus, if wages be stipulated according to the work, without any time specified, and if the work be not performed in consequence of disease or the like, even though it want but little of being complete, the servant shall not receive the wages stipulated. But the text of NA'REDA (LXXIX), *they think*, relates to one not prevented by disease. However, that has not been stated by respected authors.

## LXXX.

VISHNU:—A SERVANT or *workman by time*, who leaves the work before the expiration of the full term, shall forfeit his whole price of his labour, and pay one hundred *panas* to the king. Whatever may be injured by his fault, he shall make good to his master; unless the injury happen by the act of GOD or of the king. If the master dismiss the servant, before the full time has passed, he shall pay him his whole wages, and a hundred *panas* to the king, unless the servant were in fault.

CHANDE'S'WARA explains wages or hire (*the literal sense of bhrīti*), hire to be earned by work; a servant, who leaves that (*meaning one, who leaves his work*), unless by the fault of his master, shall forfeit the price of his labour. Thus a servant, leaving the wages which were paid him, leaving a part of them *unearned* by comparison with the quantity of work performed, shall forfeit his whole wages; and pay a fine of one hundred *panas* to the king. In the *Chintāmeni* the text is read, “a servant, who leaves his work (*carma*) “before the expiration of the full term.” The sense is obvious.

## LXXXI.

MENU:—BUT, if he be really ill, and, when restored to health, shall perform his work according to his original bargain, he shall receive his pay even after a very long time.

BUT he, who, leaving his work on account of sickness, performs the stipulated task when he recovers health, shall receive his hire even after a very long time. So the *Retnācara*, with which CULLU'CABHATTA concurs.

IF he quit his work when ill; but, when restored to health, perform it even after a long time, he shall receive his pay. Thus the *Chintāmeni*, with which the *Mitāśāra* coincides.

As for the exposition, that a servant, who quits his work from indisposition, and performs it after his recovery, shall receive his pay for the period of his indisposition, even though it be a very long time, that would be wrong: for pay cannot be due without work performed; and it is inconsistent with *the commentaries of many authors*.

## LXXXII.

NA'REDA:—If a load be damaged by the carrier's fault, whatever is lost, he shall be compelled to make good, unless the injury happen by the act of God or of the king.

“ A LOAD;” a thing on which the hired servant is employed. “ Damaged;” *literally* broken. “ By the carrier's fault;” by the fault of the hired servant.

The *Retnācara*.

CONSEQUENTLY this text does not concern a carrier alone, but any hired servant. It should be considered, that, since the term “ carrier ” must necessarily have a general sense, it may relate to every sort of servant or labourer.

## LXXXIII.

Vṛiddha MENU:—A SERVANT shall pay the full value of what he has lost by mere inattention; twice the value of what he has lost by gross negligence, or malice; but he shall not be forced to pay any thing for what robbers have seized, for what has been burned, or for what an inundation has carried away, *unless he were himself blamable*.

THE text is merely an instance given. Thus, if the loss happen by the servant's fault, but unintentionally, he shall be compelled to pay the full value; if it happen by his fault and intentionally, twice the value: but for a casual loss without any fault on his part, he shall not be forced to pay any thing. This virtually is the meaning.

The *Retnācara* and *Chintāmenī*.



## LXXXIV.

VRĪHASPATI:—If a servant, by the command of his master, and for his benefit only, do an improper act, the offence shall be imputed to the master.

“ FOR his benefit *only* ;” for the benefit of the master *alone*. “ An improper act,” such as theft or the like. “ The offence shall be imputed to the master,” not to the servant.

The *Retnacara*.

It appears from the condition, “ by the command of his master,” that, if he perpetrate a crime not commanded by his master, even though he intend his benefit only, the blame is not imputed to the master. But if it be argued, as proper to affirm, that the master does not partake of the guilt, when a servant, even by his master’s command, does an improper act for no advantage, or for his own benefit only, *the answer is*, when a master commands a servant to commit a robbery or the like, for no advantage to himself, still he derives benefit *from the act* by *some* gratification it affords him; and if he authorize it for the servant’s benefit, he derives *some* advantage by the saving of wages, or the like. But, if the servant ask, “ may I steal that man’s goods,” and the master reply, “ steal them,” reflecting, “ he is poor, what motive have I for opposing his wish ? ” in that case the master, though he authorize the theft, does not partake of the guilt.\* For this purpose, the sage has said, “ for his benefit only.”

## LXXXV.

YA’JNYAWALCYA:—A CARRIER shall be forced to make good a load *damaged or lost by his own fault*, not by the act of God or the king: and if he disappoint the purpose, *for which he is employed*, he shall be compelled to pay twice the amount of his wages.

“ NOT by the act of God or the king,” this denotes a fault on the part of the servant.

The *Retnacara*.

\* It is no native lawyer who ever be guided by this absurd interpretation.

A LOAD, to which no accident happens by the act of God or of the king, is so described. If that be lost by a carrier, through inattention, he shall be forced to make good the amount of the loss, which is incurred on that load.

AGAIN; he, who previously undertook a task, requisite for the purposes of a master busied in preparations for nuptials, when the auspicious day is near, but afterwards disappoints the purpose by refusing to perform the work, shall be compelled to pay twice the amount of his wages. The *Mitácshará*.

HERE "purpose" is employed in a general sense: twice the amount of the wages must be paid for the mere disappointment of any business previously undertaken; but if the business cannot fail, the penalty is the full amount of the wages only. So others, who follow the *Mitácshará*. But the author of the *Retnácara* says, the word "carrier" should be brought forward; "a carrier, having received his hire, and not departing at the time when the business should be done &c." In effect there is no difference. Thus the amercement for him, who abandons his work, has been already declared; the penalty, in the case of failure of the business in consequence of his not performing his task, is now propounded: loss is here the subject. Such is the meaning of both commentators. This penalty may be incurred, if the business might be greatly injured; for the servant does not disappoint it, if it be accidentally accomplished. The following text makes this evident.

#### LXXXVI.

*Vṛiddha* MENU:—HE, who does not perform his task at the full time agreed on, and disappoints the business, shall be forced to pay twice the amount of his wages; and another shall be employed in his stead.

#### LXXXVII.

YA'JNYAWALKYA:—ONE, who declines the work when yet distant, shall be compelled to pay the seventh part of the wages; or the fourth part, if he decline it on the way; but he, who quits it half way, shall be forced to give the full amount of the wages.

“ WHEN yet distant,” “ on the way,” and “ half way,” are explained by the circumstances of another servant being found with ease, with difficulty, or with greater difficulty.

IN these instances, according to the circumstances of each case, the carriers shall be compelled to pay a seventh, or a fourth part, or the full amount of their hire. A master also, dismissing a servant at these periods, shall be forced to give the same.

CHANDÉ'S'WARA.

THIS is apparently inconsistent with the payment of twice the amount of the wages, as abovementioned ; but is reconciled according to CHANDÉ'S'WARA, by directing the payment of twice the amount of the wages, if a servant cannot be found by any means. If this be said to contradict the text of *Vṛiddha MENU* (LXXXVI), the answer is, the text of *Vṛiddha MENU* should be understood as relating to a case, in which it is apparently impossible to find another servant, but in which, after desertion, another servant is accidentally found. If another servant can be immediately found, a seventh part must be paid by him who abandons work, to which he has himself agreed. But he must pay twice the amount of his hire, if he decline the work at the moment when it should be commenced. Again ; he, who deserts his employer when a distant portion of the way remains untravelled, shall pay a fourth part of his wages ; or their full amount, if he quit him half way. The master also, in similar circumstances, shall pay the proportions of the hire mentioned in this text. Such is the opinion expressed in the *Mitācśarā*.

THE meaning is this : at home, a master occupied in other business (and therefore at leisure from the business in question) can find another servant without trouble ; the fine is therefore a seventh part, because the offence is very inconsiderable. A servant, who insolently says at the moment of departure, “ I will not perform the contract,” offends greatly, and shall therefore be fined in twice the amount of his wages. Travelling on the road, and leaving his work at a near place, he does not insolently refuse the work, neither can another servant be found without trouble ; therefore he shall be fined

fined a fourth part of the wages. But deserting *his employer* at a distant place, he is a greater offender, and shall therefore be amerced in the full amount of his wages. Thus, the text (LXXXVII) is expounded in the same manner *both* by CHANDÉ'SWARA and by the author of the *Mitâcsharâ*. But the case of one, who disappoints the purpose *for which he is employed* (LXXXV), is different.

## LXXXVIII.

*Matfya-purâna* :—HE, who does not perform *business* of science or art, after receiving a consideration, shall be amerced in the full amount of it, by a king who knows the law.

HERE the consideration must be repaid to the person, who employed him for science or art ; as it is repaid to a master by a servant who does not perform the work : but a fine to the king is not here mentioned. However it is directed under a former head.

## LXXXIX.

NAREDA :—THE owner of goods, who hires beasts for draught or burden and takes them not, shall be compelled to pay a fourth part of the hire ; or the full amount, if he leave them on the road :

2. And so shall a carrier forfeit his hire, if he transport not *the goods*.

“ THE loader ;” the owner of goods. “ *Hiring*,” procuring on hire.  
 “ Beasts for draught or burden ;” horses and the like, or oxen and the rest.  
 “ A carrier ;” one who receives hire for the carriage of goods.

CHANDÉ'SWARA.

BUT others say, since the loss of the whole hire, or of a fourth part, is directed in case of desertion on the road, he, who declines the work when *the time for performing it is yet distant*, should pay a seventh part ; and the rule,

in regard to the forfeiture of a fourth part, should be understood as explained in the former text (LXXXVII).

### XC.

*Vṛiddha* MENU:—SHOULD a merchant, having hired a servant for a certain journey, sell his goods by the way, and discharge the servant, wages must be paid even for the part of the way, which they never passed, but the servant shall receive half only of the hire, which would have been due, if they had gone to their journey's end.

“ THE part of the way, which they never passed , ’ so much of the journey as remains untravelled  
The *Retnacara*.

“ EVEN for the part of the way, which they never passed , ” to the servant, though he have not travelled the whole distance previously stipulated, wages shall be paid for the work done , but half, or a portion only, of the hire, for the part of the way, which they have not passed.

The *Cbintamēti*.

ON the question, whether wages shall be withheld, because they have not gone the whole journey, the text declares wages shall be paid, because the servant is not in fault This may be stated as meant in the *Retnacara* The word “ half ” is not here intended for equal parts, but a portion in general, as interpreted in the *Cbintamēti* “ he shall receive a part of the wages for going that journey, though he have not travelled the whole distance ” and this is reasonable, since the penalty of a fourth part of the hire is directed for desertion on the way but in this case something less than a fourth part must be paid, since he discharges the servant because he has not occasion for his service and this text may be literally applied to the case of his selling the goods half way

### XCI

CA'TYA YANA:—AND if the goods be stopped or seized on the way, the servant shall receive wages for so much of way as has been passed by him.

“ BE

"Be stopped;" be sold in consequence of being stopped by any person.

MISRA and CHANDÉ'SVARA.

THE sense is, that, since the dismissal of the servant does not arise from the merchant's own choice, greater wages shall not be paid.

## XCII.

NA'REDA:—A SERVANT, stipulating *wages for a journey*, but leaving the cart on the way, shall be forced to give a sixth part of those wages; but the man, who employs labour and pays not *its hire on demand*, must afterwards pay it with interest computed from the sixth month after the demand.

HE, who stipulates wages on an agreement in this form, "I will go *the journey*," but leaves on the way the goods for which the cart was hired, shall be compelled to give a sixth part of the amount stipulated as wages. Such is the sense of the first part.

The *Retnācara*.

AND this must be explained by a particular application of the text to a *special case*, like the seventh part and the like ordained by YA'JNYAWALKYA and others (LXXXVII and LXXXIX.)

o

BUT the master, if he do not pay the hire of the journey to the servant who goes *that journey*, shall be compelled to pay it with interest.

The *Retnacara*.

IT should be mentioned, that interest on wages accrues six months after demand (Book I, v. LVI). Otherwise they do not bear interest (Book I, v. LXXI)

## XCIII.

VRĪHASPATI:—THE master, who pays not the hire of labour, after the work is performed, shall be compelled by the king to pay it, as well as a proportionate amercement.

IT

It should be here understood, as in the preceding text, that he must pay it with interest.

#### XCIV.

**CA'TYA'YANA:—**THE master, who leaves in the way a tired or sick servant, without taking care of him in a village for three days, shall pay the first or lowest amercement.

THE master, who, not taking care of him in a village for three days, leaves a tired or sick servant, shall be fined by the king.

The *Retnâcara*.

By the word "leaves," want of care is implied. That it would be an offence in a tired servant, to leave the work, *though* able to carry the burden after recovering from his fatigue, has been positively declared by former texts.

HARLOTS have been considered by CHANDE'S'WARA and others, under the title of hire, wherefore they are also noticed in *this work*.

#### XCV.

**NĀREDA:—**A DANCING girl, having received her pay, yet refusing to attend, shall pay twice as much as she received; and, if her employer refuse to admit her, he shall forfeit what he had paid.

#### XCVI.

**Smṛiti:—**BUT, if the harlot attend not when sent for, because she is indisposed, or fearful, or fatigued, or employed in the service of the king, she is blameless.

#### XCVII.

**Matsya-purāna\*.** — A HARLOT, who goes to another man

\* I MIGHT have been justified in omitting these laws, by the remark of Sir WILLIAM JONES, when translating other texts under this head from the *Pro-Lararia Seta*, that "the rest are not worth inserting." I am certainly justified in following the original infelicity, and in omitting a gross commentary on these and on the preceding texts, for they are so fully misplaced in a digest of law on caste as to be so useless.

after receiving hire, and repays not the money received, shall be compelled to pay the lecher's fee, or *twice the amount*.

2. A MAN, approaching a woman without paying her hire, or approaching her in an unlawful manner, or scratching her with his nails or the like,
3. Or unnaturally abusing her person, or causing her to be approached by many, shall be compelled to pay eight times the amount of the hire *promised*, and an equal fine.
4. HE, who, on the pretence of one person, brings a harlot for the use of another, shall be amerced by the king in one *másha* of gold.
5. IF a man employ a dancing girl and give her no pay, he shall be compelled to give her twice as much as she ought to have received; and shall pay a fine to the king of the same amount. Thus justice is not violated.
6. THE penalty, ever to be paid by many persons approaching the same woman, is twice the amount *of what she should have received if approached by one only*, and each of them shall likewise pay twice the amount, as a fine to the king.

#### XCVIII.

NA'REDA:—IF a dispute should arise among the lascivious frequenters of her house, in respect of matters occurring there, the wife have declared, that it shall be determined by the principal harlot.

THE hire of a house or the like is similar to the hire of labour; it is therefore discussed by authors in this place. That shall be now propounded.



## XCIX.

NA' REDA:—HE, who dwells in a house, which he built on the ground of another man, and for which he pays rent, shall take with him, when he leaves it, the thatch, the wood, and the bricks;

2. But, if he live, without paying rent, on the ground of another, without the owner's assent, he shall by no means, when he quits it, take away the thatch and the timber.

“RENT,” a consideration for abode.

The *Retnālara*.

It may be explained “hire” and so forth.

HE, who dwells in a house built at his own charge, or by his own labour, on the land of another, used for the site of dwelling houses, may, provided he paid rent for it, take away his own wood, and the bricks of walls and the like, when he shifts his abode; or he may sell the wall as it stands. But if he pay no rent whatever, he shall not take the grass, wood, bricks and other component parts of the house.

THE hire of a house is common in royal cities; in other instances also, what is usually paid, in the same form with revenue, by tenants residing on the land of *Brāhmanas* and the like, is merely hire or rent: for it is not truly revenue, since revenue or taxes are the sixth part of the produce and the like, payable to the king, as ordained by the law.

## C.

NA' REDA:—THE grass, wood, and bricks, which are thus removed, belong to him who leaves the ground, provided he paid rent for the spot; and not otherwise.

In the former texts it had been mentioned, that, *in o' c' yē*, he may take them; *in the other*, he may not take them. That *distinction* is grounded on property

property and on the want of property. These, therefore, are now explained in this text.

“ If he paid rent ;” if he paid the price of the abode *granted to him*.

The *Retnâcara*.

### CI.

CA'TYA'YANA :—HE, who hires at a fixed rent a house, a pool of water, a market-place, or the like, shall be compelled in a court of justice to pay the rent of it, until he restore it to the owner.

“ A POOL of water ;” one made by another man, and not consecrated, but intended for use in this world.

The *Retnâcara* and *Cbintâmeni*.

It appears therefore, that no rent should be paid, for a consecrated pool, to him who made it.

### CII.

NA'REDA :—HE, who hires at a fixed price, an elephant, a horse, a bull or cow, an ass, or a camel, shall be made to pay for the hire of it, as long as he delays to restore the cattle, having used it according to agreement.

If a thing hired be destroyed, it is the possessor's fault, unless the injury happen by the act of GOD : as mentioned under the title of deposits.

### CIII.

Vṛiddha MENU :—HE, who has hired a carriage or vehicle of any sort, and takes it, and goes away with it, but afterwards refuses to pay the hire, shall be compelled to pay it, even though he never used the carriage.

“ A CARRIAGE” generally ; meaning only a vehicle of any kind. “ Even

ven though he never used it ;” even though nothing have been carried on it.

The *Retnâcara*.

IN the *Chintâmenû* also, the last remark occurs ; and it is said, a vehicle in general is alone meant. But the same rule may be applied to a house and the like.

#### CIV.

NA'REDA :—THINGS, hired *for a time* at a settled price, let the hirer give back, when the time has elapsed : whatever be broken or lost, he shall make good, except in the case of inevitable accident or irresistible force.

“ SETTLED price ;” hire. “ Inevitable accident or irresistible force ;” the act of GOD or of the king. Therefore, a carriage and the like, broken without the act either of GOD or of the king, must be made good by the hirer. When the time has elapsed, the thing hired should be restored to the owner.

The *Retnâcara*.

CONSEQUENTLY, should a carriage or the like, hired at a settled price, be lost without the act of GOD or of the king, it is the hirer's fault ; as appears from this law. But MISRA expounds the text ; “ if it be not restored when the time has elapsed, and it be destroyed by time or the like, without the act of GOD or of the king, it must be made good by the hirer.” In his opinion, a thing lost or injured by the fault of the hirer, without the act of GOD or of the king, must be made good by the hirer ; as appears from texts cited in Book II, on the subject of deposits and other bailments.

## CHAPTER II.

### ON THE NONPERFORMANCE OF AGREEMENTS.

**A**LTHOUGH nonpayment of wages and hire occur among disputes between master and herdsman, (for which reason this title is delivered by VRĪHASPATI immediately after that of nonpayment of wages; and disputes between master and herdsman are placed first in the *Retnācara* and other works;) yet nonperformance of agreement has been propounded by MENU immediately after nonpayment of wages: wherefore it is first inserted in this digest (*before contests arising between the owners, and keepers, of cattle*).

#### I.

**MENU:**—THIS is the general rule concerning work undertaken for wages or hire: next, I will fully declare the law concerning such men as break their promises.

“ THIS general rule ” is fully declared although the wages of herdsmen have not been yet propounded by MENU, the rule in case of nonpayment has been delivered, and the wages will be explained under a subsequent head. “ Next I will fully declare &c.” breach of promise, such as the nonperformance of actual agreements, suggested for consideration by breach of compact between master and servant, is next propounded.

THE text is thus expounded by CULLU'GABHATTA: “ this rule concerning work, under the title of nonpayment of wages, has been completely delivered: I will next declare the rule of punishment for those who violate their engagements.”

## II.

VRĪHASPATI:—THIS conduct has been prescribed to masters and servants; now learn concisely the rules concerning promises.

“PRESCRIBED to masters and servants,” including master and herdsmen; for that title of law is previously delivered by VRĪHASPATI. The present title of nonperformance of agreements is expounded by CULLU‘CABHATTA (in *his gloss* on the fifth verse of the eighth chapter of MENU) “breach of an agreement made.” NA‘REDA explains it.

## III.

NA‘REDA:—THE *general* rule settled among irreligious men, and among citizens and the like, is named a compact; and the title of law, concerning disputes arising thereon, is called breach of compact.

*Fasthenda* or irreligious;” excluded from the triple *Vēda*, as the *Yavanas* and others. “Citizens;” townsmen. “And the like;” this term intends companies of traders, artificers &c. “The rule settled,” as will be mentioned. An agreement for stipulated duties, violated by nonperformance, is the subsequent title.

The *Retnācara*.

THUS the breach of a general agreement in this, or other form, “we will join to repel thieves and robbers,” is a breach of promise. An agreement for stipulated duties is a compact; nonperformance of it is a breach of compact; and the government of those, who break their engagements, forms a title of law. A similar exposition is given in the *Mitāśhṛṇā*.

## IV.

YA‘JNYAWALKYA:—HAVING erected a building in the town, and endowed it, and having placed there *Brāhmanas* learned in the three *Vēdas*, let the king enjoin them to observe their duty.

HAVING

HAVING erected a building, or house of masonry, or the like, in the town or city, and having placed there *Bráhmaṇas* learned and virtuous, let him give this injunction, “observe your duty.”

HAVING erected an endowed building; an edifice enriched by a grant of gold or the like. Such is the meaning, on the concurrent exposition of the *Mitácshara* and *Retnácara*. Endowed with land, money, or the like, whereon the priests, residing there, may subsist. The intention is, that he should assign land, money, or the like, for their maintenance. The sage declares what should be done by *Brahmanas* so enjoined to observe their duty.

## V.

YA'JNYAWALCYA:—DUTIES, which are stipulated or seasonable (*for samayika may bear either sense*), or prescribed by the king, and *which are not inconsistent with their own regular duties, should also be diligently observed by those priests, and enforced by the king.*

DUTIES arising from compact, or occurring from season, and consistent with moral and civil law, such as care of cattle, preservation of water, management of temples, and the like, should be diligently observed. And the king should enforce the observance of seasonable duties, not inconsistent with *regular* duty, such as the entertainment of all travellers, and a rule that horses and the like shall not be carried to the dominions of his enemy.

*The Mitácshará.*

It follows, that the priests collectively, and the king, are the persons by whom these duties should be observed. But “seasonable” is explained in the *Retnácara*, ‘rites for the happiness of society.’ Such are monthly benedictions pronounced for the king; and monthly deprecation; and similar duties prescribed by the sovereign.

OTHERS hold, that YA'JNYAWALCYA here explains the sense of the word, “duty,” in the expression, “enjoin them to observe their duty;” acts, which are seasonable, or prescribed by the king, and not inconsistent with their own

own regular duties. Thus it follows from the word, "also," that the duties of their tribe and order must certainly be observed: the prescribed acts of their tribe and order, seasonable duties, and those commanded by the king, are intended by the term, "their duty." Seasonable acts have been explained by authors as above. "Duties or rules prescribed by the king" are such as the following; "for this man, though not degraded, yet fallen under the king's displeasure, no sacrifice shall be performed." These rules must be observed, if they be not inconsistent with regular duty. Therefore an injunction to attend at the king's gate from dawn to evening, or to sacrifice for all the inhabitants of a town, need not be observed; for it would obstruct the whole of the rites constant and occasional, or be incompatible with sacrificing for twice-born classes only. Yet on particular occasions, an obstruction to the performance of constant rites may be admitted. As for the opinion, that a duty occurring with the season, such as deprecatory rites and the like, must necessarily be performed, though not promised, it is wrong: for it is founded on no authority, and punishment is directed for breach of promise only.

## VI.

VRĪHASPATI:—ASSEMBLING priests endued with knowledge of the *Vēda*, learned teachers of the scripture, and priests who keep a perpetual fire for oblations, let the king establish them in that place, and assign their subsistence:

2. Let him grant to them, in his own dominions, houses and land exempt from taxes, declaring by a written grant, that the royal dues are remitted:
3. They must perform, for the townsmen, the constant, occasional, and voluntary rites, and those which are deprecative, or expiatory, and they must decide doubtful cases.
4. A COMPACT, formed on consultation among the inhabitants of a town, the companies of artisans, and the several classes of men, must be observed in a time of alarm, and

and at the season of rites *performed in common*, and also on *other occasions*.

5. If there be apprehension of highway robbers or thieves, it is considered as a common danger; and should be repelled by all, not in any instance by one alone.
6. First establishing mutual confidence, by a solemn oath, by a written contract, or by the attestation of witnesses, let them next proceed to the business *agreed on*.
7. NEITHER men influenced by *causeless* enmities, or passion, nor such as are foolish, indolent, timid, rapacious, diseased, or aged, nor infants, may be appointed *chief* advisers in affairs (*cārjā chintā*);
8. But those, who are pure, who know the scripture and their *own* duties, who have dominion over their passions, who are capable, who sprung from honest families, and are skilled in all affairs, may be appointed *highest of the confederacy*.
9. Two, three, or five persons should be appointed advisers (*hiṣṭāḍḍin*) of the association; their counsel should be followed by the inhabitants of the town, the companies of artisans, and the several classes of men.



the priest is vested with property, consisting in that office, by the authority of a mandate from the reigning king

“ AND decide doubtful cases” (VI 3), cases relating to judicial contests. This is a just interpretation, and consistent with ordinances.

“ THE inhabitants of the town” (VI 4), *literally*, the town, intending the inhabitants collectively. “ Companies of artisans,” meaning a body or multitude of persons belonging to the same tribe and following the same profession. “ The several classes,” *Brahmanas* and the like collectively

CHANDÉSWARA.

“ COMPANIES of artisans,” workmen or artisans collectively.

The *Chintāment*

WHAT is done after consultation, by these bodies and companies, or by any of them, is a compact or agreement. The sage explains the motive and season of such an agreement (“ in a time of alarm” &c. VI 4). “ Alarm,” apprehension, or suffering, from robbers or the like. “ Rites to be performed *in common*,” such as fasts and other sacraments. So MISRA CHANDÉSWARA also expounds it similarly. By the words, “ or the like,” it is indicated, that an association should also be formed if injury be suffered from the inhabitants of a different town, or from other inhabitants of the same town. By the expression, “ and also,” it is intimated, that they proceeded in the same manner on other occasions, such as general rejoicings and the like.

Thus it appears, that an agreement should be made for repelling robbers and the rest. The motive of a compact is thereby declared, the *proper* “ season” is obvious (corresponding with the motive), he declares the form in a *subsequent verse* (VI 6)

“ A SOLEMN oath;” ordeal, as the contact of water which has touched the feet of potent deity. The meaning of a “ written contract” is obvious. “ Attestation of witness” *literally* intermediate persons; intending persons who

who become witnesses of the compact, and are not partial favourers of any one. The literal sense of the term, intermediate (*medlyaj'la*), is one who stands between (*medlyé tist'lati*).

THUS any one of these three modes may be employed for the purpose of proving the agreement at a subsequent time. The construction of the sentence is, "establishing confidence by any one of those three modes."

AMONG those inhabitants of the town and the rest, if all had *equal* authority, no benefit would arise from their various degrees of wisdom; therefore some should be invested with chief authority, as advisers in affairs, to show the best *mode of proceeding*. What descriptions of persons they should not invest with principal authority, the sage declares (VI 7). "Men influenced by *causeless* enmities; *literally* inimical:" he who proceeds to an act without attention to the consequences of it, is said to be "influenced or impelled;" and the suffix here employed bears the same sense with the term thus explained by JUMERA.

"INFLUENCED by passion" (VI 7); under the impulse of excessive lust or anger. "Foolish:" the term is explained in the *Retnâcara*, incapable; but explained by GO'YI'CHANDRA, in the *Sanskṛipta-sāra-parisṛṣṭa*, "idiot."

FROM what descriptions of persons they should appoint their chiefs, the sage declares (VI 8). "Pure," *that is, virtuous*; not deceitful. "Governing:" having dominion over their organs; void of avarice and the like. "Their counsel should be followed;" consequently a fine is incurred by a breach of their commands. This, YA'JNYAWALKYA expressly declares.

## VII.

YA'JNYAWALKYA:—THE directions given by the advisers of the association should be observed by all; he, who disobeys them, shall be compelled to pay the first amercement.

THE first amercement; meaning two hundred and seventy *panas* of copper.\*

The *Mitáksharā*

THIS offence consists in disobeying the directions given by the adviser of the association, CA'TYA'YANA prescribes a fine for him, who, from ignorance, urges *too obstinately* his own opinion during a discussion on business to be performed.

### VIII

CA'TYA'YANA:—HE, who interrupts the reasonable discourse of a speaker, and allows no other to speak, and he who talks idly, shall incur the first amercement.

“ Who interrupts reasonable discourse,” who thus breaks in upon it, “ you talk absurdly ” one, who mutters, “ I also will speak, why should these talk ? ” “ Who allows no other to speak,” *literally* giving no opportunity, one, who gives no opportunity for others to speak, or allows no other to discourse, and prates much *by itself*. These, and he who urges bad advice, insisting that it should be adopted as good, shall pay the first amercement.

In the *Ratnatarā* it is explained, he, who talks *idly* to the advisers of the association. The sense may also be thus stated, i.e. who behaves with disrespect towards them.

### IX.

YAJNYAWALKYA:—THIS is the rule for companies of artificers, traders, and irreligious men, and for various tribes, let the king preserve their distinctions, and oblige them to adhere to the conduct above mentioned.

the authority of the *Vēda*; such are dancers, followers of BUDDHA, and the like. "Tribes;" sets of men living by the same profession, such as soldiers and the like. For these four descriptions of persons, this is the rule, as propounded in the former text (V). Let the king preserve their distinctions; the rule of duty for the artisans and the rest: and let him oblige them to adhere to the conduct abovementioned.

The *Mitācsharā*.

OTHERS take the word *naigama* in its literal sense of trader, as it is explained in AMERA's dictionary.

MANY texts, delivered by YA'JNYAWALKYA immediately after that above quoted (V), will be cited in their places. By tribes are here meant other sets of men besides artisans and the rest, and different from *Bráhmaṇas*.

The *Retnācara*.

THUS, in whatever tribe an agreement is made, by that *tribe* it should be observed; it follows, that disobedience to directions given by one who is appointed *prámāṇika*, or president, of barbers or the like, is a cognizable offence. This is the whole meaning.

## X.

NA'REDA:—LET the king maintain the associations of irreligious men, of sectaries who detract from the authority of the *Vēda*\*, of companies of artisans, traders, and soldiers, and of various tribes and the like, both in a place of difficult access and in a frequented spot.

"COMPANIES of traders" (*pūga*): merchants and the like collectively. Others explain it an assemblage of persons of various classes, who have no determinate profession. "Companies of soldiers;" armed men collectively. "Various tribes and the like;" the term "and the like," suggests multitudes, and crowds.

The *Retnācara*.

THE term "and the like," including all descriptions, denotes *that others* are comprehended in those *which* are noticed.

The *Cbintāmens*.

# XI.

NA' REDA: — WHATEVER be their duties, their *regular* business, and prescribed rules, and whatever be the conduct enjoined to them, that *let the king* approve.

"THEIR duties," their prescriptive usages. "Their business," their proper occupation for a livelihood. "Conduct enjoined to them," prescribed behaviour.

The *Retnācara*.

"THAT approve," the word king must be supplied in the sentence: "that let the king approve." Thus it is directed, that he shall not act otherwise than *is consistent with* their prescriptive usages and so forth.

# XII.

CA'TYA'YANA: — WHATEVER be the duty of *particular* societies, according to that let them conduct all affairs, *firmly* abiding by their own profession.

THIS should be understood as coincident with the prescriptive usages, or duties, mentioned by NA' REDA.

# XIII.

CA'TYA'YANA: — THE ascertained commands of the king, not inconsistent with *regular* duty, should in the first place be exactly performed as directed by the king.

2. THE sinful man, who obeys not such ordinances as are made by the sovereign, *and are not inconsistent with the divine law*, shall be rebuked and punished as disobedient to the royal command.

“ NOT inconsistent with *regular duty*,” the prescribed acts of each class and order. “ Whatever be the ascertained command of the king” (*not repugnant to that duty*), such should be the conduct of the subject. The sage directs an amercement in case of disobedience (XIII 2): neglect of the king’s commands is subjoined as the cause of the offender’s being deemed a sinner. This offence consists in the breach of allegiance. VRĪHASPATI now declares the engagements of societies and the like.

#### XIV.

VRĪHASPATI: — “ THE construction of a hall, of a house of refreshment, or of a temple, a pool or a garden, relief to the helpless and poor, sacrificial rites,

2. “ A common way, and mutual defence, shall be effected by us, according to *our several proportions*,” if such a written contract be made, it is a binding engagement,
3. And must be observed by all. Of him, who refuses *his part*, though able to perform it, the punishment is forfeiture of all his property, and banishment from the town :
4. And for that man, who contradicts *his associates*, or neglects *his part*, a fine is ordained of six *niṣka*s containing four *suvernas* each.

IN the case of an agreement for the construction of a hall or the like, which is the highest association, if a man break his engagement, though able to perform it, he shall be punished by confiscation of all his property and banishment from the country : and this punishment is directed for the case where he formerly said, “ I will perform it,” but now says, “ I will not perform it.” In case of neglect, another punishment is directed (XIV 4) : *the first term in that text* is explained by AMERA, ‘ contradiction.’ Thus, if a man, having previously formed an engagement, conspire with some party to break it, he shall be fined in six *niṣka*s containing four *suvernas* each ;

or if he be guilty of neglect, (that is, if he do not give attention to it), he shall be fined in the same amount.

OTHERS hold, that an adviser in affairs of the association is guilty of neglect, if he do not coerce one who refuses to perform his part, and shall therefore be amerced: and any stranger also may be amerced, if he interfere to break the association.

“ A COMMON way ” (XIV 2): *literally* a family-way; a road for a family. “ Mutual defence:” *literally* resistance; *meaning* opposition to the inroads of bad men.

The *Retnācara*.

## XV.

MENU:—THE man, among the traders and other inhabitants of a town or district, who breaks a promise through avarice, though he had taken an oath to perform it, let the king banish from his realm.

2. OR, according to circumstances, let the judge, having arrested the promise breaker, condemn him to pay six *nishkas*, or four *suvernas*, or one *satamāna* of silver, or all three if he deserve such a fine.

3. AMONG all citizens and in all classes, let a just king observe this rule for imposing fines on men, who shall break their engagements.

“ A TOWN;” in its usual sense. “ A district;” a number of towns. “ Traders and others;” a multitude of persons following the same profession, but residing in several districts. “ Having arrested ” (*nigrihya*); this may be expounded, having admonished. Six *nishkas*, or four *suvernas*: the words may signify six of those *nishkas* which weigh four *suvernas* each; to exclude other quantities, namely the *nishka* of one hundred and fifty *suvernas*, and the *nishka* of five *suvernas*.

The *Retnācara*.

MISRA

MISRA delivers the same exposition, and adds; "MENU here intends six *nishkas*, and has further directed a *satamāna* of silver." A *satamāna* contains three hundred and twenty *ratnāś* or seeds of the *gunjā*.

CULLU'CABHATTA holds, that, according to circumstances which may aggravate or extenuate the fault, the punishment should be exile, and fines of six *nishkas* and one *satamāna*; all, or each of them,

THUS, in concurrence with VRĪHASPATI, exile is the penalty directed in case of refusal; a fine of six *nishkas*, in case of opposition or negligence; and a fine of one *satamāna*, in the case of a slighter offence.

"ALL classes" (XV 3): an assemblage of several classes,

The *Retnācara*.

#### XVI.

NA'REDA:—THOSE especially should be punished, who separate *themselves* from the association: they should undergo fear and terrour, being avoided like diseased persons.

"WHO separate from the association;" who violate the engagement formed by the community.

#### XVII.

YA'JNYAWALKYA:—HIM, who embezzles the property of the company, and him, who violates his engagement, let the king banish from the realm, after confiscating all his effects.

"THE property of the company;" the joint property of all the citizens and the like.

The *Retnācara*.

VIJNYĀNEŚWARA gives a similar exposition, but adds, that, "in the case of a breach of compact or engagement enjoined by the king, or formed by the society, if the offence be great, the penalty is banishment from the



realm ; but, if the offence be slight, *it shall not exceed* the amercements abovementioned, as propounded by MENU.’

SOME explain it as intending the penalty for embezzling money set apart for the purpose of building a temple or the like.

### XVIII.

CA’TYA’YANA :—BHRĪGU directs, that all those, who commit violences, oppose *the general will*, and dissipate the wealth of the community, shall be punished, after giving notice to the king.

“ WHO commit violences ;” who use force against the society, by blows and the like “ Who dissipate the wealth of the community ;” who destroy property amassed by the association for a temple or the like. “ They should be punished. they should be fined in the amercement directed, for an amercement of six *ni / cas* is ordained in case of opposition. They shall not be banished or expelled, *as the term uchchédya might seem to denote.* Or it may be understood, that, in case of opposition, if the offence be great, *the penalty is expulsion.*

### XIX.

VRĪHASPATI :—HE, who injures or dissipates the common stock, or breaks his engagement, shall be banished from the town for that *offence*, even though he be learned in the triple *Véda*.

### XX.

*The Same.*—AN insulting and malevolent man, one who opposes *the society* or commits violences, and an enemy to the company of artisans, to the society of traders, or to the king, should be instantly banished.

“ INSULTING ,” hurting *the* minds of others. “ Malevolent ;” inimical.

*The Retrâcara and Chintâment.*

### XXI.

## XXI.

VRĪHASPATI:—LET the chiefs of families, of associated artisans, or of tribes, whether residing in towns or forts, curse and forsake sinners.

“CURSE;” punish with maledictions.

The *Retnācara*.

By this text it is thus declared legal for the chief of a family or the like, to inflict punishment on offenders.

## XXII.

VRĪHASPATI:—WHATEVER be done by them according to their duty, whether harsh or kind towards *other* men, should be *first* approved by their chiefs: these indeed are considered as undoubted actors in all affairs.

“ACCORDING to their duty;” not repugnant to it. “Undoubted actors;” undoubted *guides* in affairs.

CHANDÉSWARA.

WHATEVER business any person, included in the association, performs consistently with regular duty, that should have been *previously* authorized by the chief.

## XXIII.

VRĪHASPATI:—IF they conspire, from an impulse of enmity, to injure one of the society, they should be restrained by the king; and actual injuries shall be punished.

AMONG associates, if several unite to hurt one, the king should restrain them; and if they do a wrong by verbal deception or the like, he shall chastise them: and the punishment in this case should be exile or the like, according to the magnitude of the injury.

XXIV.

## XXIV.

VRĪHASPATI:—If a quarrel arise between the chiefs and the communities, let the king decide it, and reduce them to their duty.

If there be a dispute between the communities and their chiefs (meaning the persons invested with authority, and called *presidents* or *pramāṇica*), let the king determine the controversy according to the proof of their disobedience to their chiefs, and in consequence of his decision, either punishing or not punishing them, *or their chiefs*, according to circumstances let him reduce them to their duty. But if the disobedience be heinous, banishment is proper.

## XXV.

NA'REDA:—PROMISCUOUS assemblies of those *persons*, military array without cause, and reciprocal injuries, let not the king tolerate.

“PROMISCUOUS assemblies,” a superiour society mingled with another of inferiour rank. “Military array without cause,” without a sufficient motive, such as apprehension of danger and the like. “Mutual injuries,” reciprocal wrongs. “Those *persons*,” irreligious men and the rest, as already mentioned by NA'REDA (III).

The *Retnācara*.

SOLDIERS and the like may carry arms even without a special motive. The sense resulting from the text is, that the king should restrain all others from *meeting in promiscuous assemblies, from carrying arms without cause*, and so forth.

## XXVI.

CA'RYA'YANA:—HE, who *usually* eats off the same vessel, or in the same line with another, shall be amerced if he refuse to do so\* without showing a *reasonable ground of exception*.

He,

HE, who refuses to do so, shall be amerced.

The *Retnácara*.

IT is customary with some *tribes*, for many persons to join and eat off the same vessel. The rule is general : he, who *usually* eats another's food, may not, through perverseness, without stating a reasonable ground of exception, or other sufficient cause, reject food given by that person. It may be *also* determined, that even if *the practice originated in such motives, as are mentioned in the Mabá-bhárata*, " through friendship food may be eaten *from each other's hands*, or it may be *so* eaten through extreme distress ;" even then a motive *for refusal* should be shown, *namely* a breach of that friendship, which was the previous motive for eating food from each other's hands.

## XXVII.

VRĪHASPATI:—THOSE traders, who conspire to abscond and defraud the king of his due, shall be compelled to pay eight times the amount.

*Literally* the king's share, *meaning* the king's due.

The *Chintámeni*.

THUS, if merchants going for the purposes of trade, and buying and selling goods, abscond in the night after promising to pay the king's taxes, he may take from them eight times the amount of his taxes ; or in the same instance the chief of the company *may levy that penalty*. These two laws concerning societies (v. XXVI, &c. v. XXVII) are mentioned incidentally.

## XXVIII.

NA'REDA:—LET the king restrain them from acts which are injurious to him, which in their nature are vile, or which obstruct his affairs :

2. And let a king, who desires prosperity, repress sinful proceedings, which are unauthorized by moral law, if they be actually attempted.

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The *Ritnīscara*,

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NA'REDA:—LET the king restrain them from acts which are injurious to him, which in their nature are vile, or which obstruct his affairs :

2. And let a king, who desires prosperity, repress sinful proceedings, which are unauthorized by moral law, if they be actually attempted.

*Literally* disapproved by nature ; “ acts, which in their nature are vile.” “ Sinful proceedings,” as the practice of gaming and the like ; acts not productive of good. “ Unauthorized by moral law ;” not familiar under moral institutions. “ Restrain them ;” the irreligious men and the rest (III).

The *Retnácara*.

SINCE whatever general agreement has been made by irreligious men and the rest, must be observed ; and if they break it, they must be punished by the king ; *it might, therefore, be inferred, that every agreement, even though illegal, must be maintained*: for instance, “ we will all prevent the subjects from paying taxes to the king ; or, “ let us always go naked ;” or the following, “ we will game ; we will solace ourselves with harlots ; we will run on the king’s highway ; let us worship an ant-hill under a *śácótaca* tree.”\* It may be affirmed, that this text is intended to prevent such an inference.

## XXIX.

YA’JNAYWALACYA :—WHEN their business is finished, let the king dismiss those, who have attended for the affairs of a community, after honouring them with *tokens of regard*, with gifts and with expressions of civility.

2. WHATEVER a man, who is sent on the affairs of a community, shall receive, let him deliver *to his principals* ; if he do not voluntarily deliver it, he shall be compelled to pay eleven times the amount.

LET the king, having finished their business, dismiss persons who have attended him on the affairs of a community, and honour them with tokens of regard, with gifts, and with expressions of civility : such is the meaning according to the *Mitáślará*.

“ TOKENS of regard ;” allowing them seats and the like. “ Gifts ;”

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\* The rough leaved trophis of botanists, called in the vernacular dialects *śácót’a* or *Sjáura*. The author alludes to a proverbial expression of contempt ; “ thou art like an ant hill under a *śácót’a* tree.” The plant itself also furnishes a contemptuous simile.

honorary presents of clothes and the like. " Expressions of civility ; " compliments. The meaning is, that attention should be shown by the king to the affairs of a community.

THE second verse is thus expounded by VIJNYAÑEŚWARA ; ' a person, deputed by merchants \* to attend the king on the affairs of the community, should, even unasked, deliver to those merchants whatever clothes, money, or other things may be received. Otherwise he shall be compelled to pay a fine equal to eleven times the amount of what was received. Consequently, whatever is given by the king, in an honorary form, to one deputed on the affairs of a community, should be received by all the members of it.

. . . XXX.

VRĪHASPATI :—WHATEVER he may there obtain, is the property of all *the associates*, and should be divided according to their several proportions, whether it have been received six months or one month.

" THERE ; " at the king's palace. In declaring it the property of all, without a restriction, that only that, which is given to all, belongs to all, the meaning is this ; whatever is received by some of the associates, while attending at the king's palace, is the property of all. It is observed in the *Retnācara*, that " six months or one month " are mentioned in an indefinite sense. Consequently it is meant, that after many days they may collect and divide effects received : and that is optional.

XXXI.

VRĪHASPATI :—OR it should be given to the poor, the aged, or the blind, to women or infants, to afflicted, diseased, or childless persons, or other *needy* people ; this is the primeval rule.

2. WHAT is acquired and kept by those *members of a com-*

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\* *Mrhajas*, usually employed in its literal sense of a great or respected person, but here seems to signify a merchant, as in the common dialect.



*munity*, or borrowed for the use of the society, or obtained as a present from the king, is common to all *the associates*.

“ DISEASED,” other than one afflicted *with pain (atura)*.

CHANDÉSWARA.

BUT HELAYU'DHA reads *acata*, instead of *atura*, and explains it *handless or maimed*.

“ CHILDLESS persons or other *needy* people ,’ under this are comprehended others (besides those enumerated), who should be maintained by the tribe, or by the company of artificers or the like, and whom the sage contemplated.

CHANDÉSWARA.

“ POOR ;” indigent. Thus a gift to those, whom it is necessary to maintain, is approved ; and that should be in proportion to the respective shares of all the givers.

### XXXII.

CA'TYA'YANA:—WHATEVER is borrowed on pretext of a community, and is consumed or dissipated for their own purposes, must be made good by those, *who borrowed it*.

“ WHAT is borrowed on pretext of a community,” under pretence of the society, by fraud in the name of the community, must be made good by the borrowers.

The *Gbuntāment* and *Retnācara*.

“ DISSIPATED” or *aliened*; given away. This is merely an instance shown, the contracting of a debt is meant by the text. It is directed by VRĪHASPATI (XXXI 2), that a debt, contracted on account of the community, shall in general be discharged by all *the members of it*, this text (XXXII) declares, that in some particular instances it shall not be so discharged.

XXXIII

## XXXIII.

CA'TAYA'YANA:—ALL those, who are admitted into a society of *traders*, or company of artisans, or other community, share equally the previous stock and the debts.

EVEN those, who are subsequently admitted, by general consent, into a society or other community of traders or the like, become sharers of the actual stock and debts, or of the capital invested in commerce and so forth.

The *Cbintámeni* and *Retnácara*.

It should be understood, that, if an agreement be made by general consent, at the time of admission, in this form, “ I have no share in the gain, loss, or other *occurrence prior to admission* ;” in that case he does not partake of the gain, loss, or the like. This is consistent with reason.

## XXXIV.

CA'TYA'YANA:—THUS also he, who remains in the society, is a sharer in *all* matters relating to provisions, partible stock, gifts, and duty; but he, who forsakes it, is entitled to no share.

THE term, *all matters*; or *acts*, is referred to the other terms severally. “ Provisions,” or eatables; sweetmeats and the like. “ Partible stock;” grain and the like. “ But he, who forsakes it, is entitled to no share;” he who forsakes the society, or withdraws himself from the community, on motives of his own, is not entitled to any share.

The *Retnácara* and *Cbintámeni*.

THE meaning is this; of what is consumed by the society, shares are received by those only, who remain in the community: and that, which is distributed, shall be shared by them only; not by those, who are out of the society at the time of partition, on the grounds of their having been members of it when the effects were acquired. Moreover, if any thing be given, or any other legal act be done, by any one member of the community, all the members of it are partakers of the act: and in the case

of a gift made by one, it is a valid gift on the part of the whole community, provided the donation were made by him while he was a member of it.

THESE engagements of members of communities have been propounded; the mutual agreements of two persons should also be discussed. For instance, "if thou givest *that*, then I will give *this*, if thou dost *that*, I will do *this*; if thou dost *that*, I will give *this*, if thou givest *that*, I will do *this*;" such, and of many other sorts, are mutual promises. In these instances, "if," or "when," denoting a contingency, and a contingency implying two parts, both payment and nonpayment are signified. Thus, (from the the general construction of words mentioned in successive order,) by expressing, "in case of thy gift *being delivered*, my gift *shall be delivered*," it is in effect declared, "my gift shall be withheld, in case thy gift be withheld." therefore, the withholding of the gift is stated as one part of the contingency; and hence no other penalty is directed. But where the promise is a general declaration, ascertaining work to be done, and wages to be paid, in this form, "thou shalt perform the work, and I will pay the wages," in that case, since nonperformance of work and nonpayment of wages are not expressed, another penalty is proper *in the event of a breach of promise on either part*.

"If thou shouldst do *that*, I would do *this*," such a declaration is no promise for the conditional future tense expresses something dependent on an event, and implies *possible* non-performance.

AN ox, which carries the weight of two thousand *suvernas*, is valued at so much, one, able to carry a burden equal to four thousand *suvernas*, is valued at so much: such is the general usage. Other lawyers explain "by work," by the load; as much cleft wood as is portable by one person, and so forth.

"By beauty;" handsome women and the like sold according to their personal charms.

The *Retnācari*.

A HANDSOME female sold by beauty, according to the difference of complexion. Other lawyers explain it, stones and the like sold by their beauty.

"By splendour;" pearls, *gems* and the like sold by their lustre.

The *Retnācara*.

#### IV.

NA'REDA:—HE, who is dissatisfied with his purchase, after buying a commodity for a just price, is called a rescinder of purchase, which is a title of judicial procedure.

THAT man, who is dissatisfied, is named the rescinder of purchase, a title of law: meaning him, who rescinds a purchase. But other lawyers hold, that the title of law is *something* appertaining to that man: his dissatisfaction is, in law, termed rescission of purchase; for his discontent is the cause of litigation.

THE same legislator declares what should be done in case of rescission.

#### V.

NA'REDA:—IF a man, having bought for a just price any cloth or other consumable commodity except seed-grain, should suspect, that he had made a bad purchase, he may return it on that very day to the seller, unless it be diminished.

2. THE buyer, who returns it on the second day, shall give

*the feller* a thirtieth part of the price ; on the third day, twice as much, or a *fifteenth* : and, after that, it is absolutely his own.

“ A THIRTIETH part of the price ;” the thirtieth part above the price : and this relates to cloth and other commodities liable to destruction by use, except feed-grain.

The *Retnácara*.

OTHERS say, that, if the buyer return it on the second day, the feller shall receive the thirtieth part of the price.

“ TWICE as much :” twice a thirtieth ; that is, a fifteenth according to the opinion of other lawyers. After that *period*, the purchase must not be rescinded.

IN the *Mitácshará*, a reason for the exception is mentioned ; “ because a distinct period will be directed for returning feed-grain and the like.” In the *Retnácara* it is said, “ this relates to cloth and other commodities liable to destruction by use, except grain.” In the *Cbintámeni* it is observed ; “ this rule is applicable to those things, for the examination of which three days are allowed.” The following text declares the time allowed for the examination of grain and other commodities.

## VI.

YA'JNYAWALCYA :—THE time allowed for the trial and examination of feed-grain is ten days ; of iron, one day ; of *lulls* and other beasts of burden, five days ; of *pearls* and gems, seven days ; of female slaves, one month ; of milch cattle, three days ; of male slaves, half a month.

“ SEED ;” grain to be sown and the like. “ Beasts of burden ;” bulls and other cattle. “ Gems ;” pearls and precious stones. “ Women ;” female slaves. “ Milch cattle ;” female buffaloes and the like. “ Men ;” male slaves. For the examination of these (namely of seed and the rest) the time allowed is,

in their order, ten days, *one day*, and so forth. The sense expressed is, that, if rescission be proposed, on the discovery of a defect when the seed or other grain is examined, the purchase may be cancelled within ten days; but not later.

## VII.

**MENU:**—A MAN, who has bought or sold any thing in this world, *that has a fixed price and is not perishable, as land or metals*, and wishes to rescind the contract, may give or take back such a thing within ten days.\*

BUT this text of MENU relates to all things bought without examination since there are texts repugnant to a rescission of the contract on the tenth day, and so forth.

*The Retnācara.*

THE text of MENU concerns things not *very* liable to destruction by use, as a house, a field, a car, a chair, a bed and the like, excepting iron, and other things, *for the trial of which a different period is allowed.*

## VIII.

**CA'TYA'YANA:**—IF a man, having bought vendible things, as milch cattle and the like, which have no blemish, repent of his bargain, and give them up within the limited time, *and before they are delivered to him*, he must pay a tenth part of the price to the owner.

2. BUT, if a buyer have received the commodity sold, and repent of his purchase, BURĪGU has ordained, that he shall pay a sixth part of the price, when he returns it.

“ IF he have received the commodity;” if he have taken possession of it.

*The Retnācara.*

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\* See the commentary on this text quoted again at v. XXIII.

THE inconsistent penalties of a sixth and a tenth part are reconciled, by MISRA and CHANDE'SWARA, from the circumstance of the buyer's having, or not having, received the commodity. Thus, if the thing, which he bought, remained with the vender, he forfeits a tenth part of the price; if he carried it home, he forfeits a sixth of the price.

SHOULD it be said, this is inconsistent with the forfeiture of a thirtieth part; the answer is, there is no inconsistency: for the penalty of a thirtieth part is established in the case of things other than milch cattle and the like; and the forfeiture of a tenth part *is established* in the case of milch cattle and the rest.

CHANDE'SWARA remarks, that both these texts of CA'TYA'YANA relate to things bought without examination.

## IX.

YA'JNYAWALKYA:—A RETURN of commodities, once bought, shall not be made by a merchant who well knows the profit and loss on vendible things: if he obstinately persist in returning them, he shall pay a sixth part as a fine *to the king*.

A RETURN of commodities, bought after examination, shall not be made by a purchaser, who perceives not any advantage, after making the purchase, *from rescinding his contract* as one made for a less quantity than what the price bore at the time of the purchase; nor shall the contract be rescinded by a vender, who perceives no loss on the commodity, in consequence of the rate exceeding the market price. But the buyer and seller may rescind the contract, if they perceive such gain or loss. The text is delivered for the sake of this exception.

The *Mitâkshara*

IN the *Retnâcitra* a similar exposition is given. Thus, after the purchase of a commodity examined, if the purchaser think it bought for too high a price, he may return it, after ascertaining the excessive price; but not without ascertaining it. *Consequently* the purchase even of a commodity examined may be rescinded.

IN the *Calpateru* the text is read, *abbijānatā*, well acquainted with the profit and loss on vendible things, instead of *avijānatā*, not perceiving profit or loss on vendible things; and the same reading occurs in some places of the *Chintāmeni*. According to that reading, if a thing be knowingly bought at a high price from the exigency of affairs, the contract cannot be afterwards rescinded. But the *Retnacara* rejects that reading, because it disagrees with copies of *YA'JNYAWALKYA*, and with the *Pracasā*, *HELA'Y-UDHA* and the *Pāryā'a*.\* In fact there can be no return of a commodity voluntarily purchased at a high price, in a cheap season, by one who actually knew the price to be great.

RESCISSION of contract and a penalty have been propounded in the case of a commodity bought without trial. In the case of commodities bought after examination, rescission has also been allowed in consequence of discovering the price to be excessive, and so forth. What is to be done in regard to the purchase of a thing examined, if no increase or diminution of price be discovered, is now stated.

## X.

NA'REDA:—A TRADER, skilled in the value of vendible articles, shall not return those, which he has bought: it is his duty to know what may be the loss on each article, and what the gain.

2. A BUYER ought at first himself to inspect the commodity and ascertain what is good and bad in it; and what, after such inspection, he has agreed to buy, he shall not return to the seller, *unless it had a concealed blemish*.

If he bought a thing for a great price, at a season when the general rates were moderate; or a damaged article, for the price of undamaged goods; may he not justify the rescission of the contract? Therefore the sage says; "it is his duty to know what may be the loss on each article, and what

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\* I have nevertheless retained the version of the text as it is read by LACHHMI'N'HARA, author of the *Calpateru*. T.



the gain." Consequently, the price should be verified, and the commodity examined, before the purchase be completed.

" AND what, after such inspection, he has agreed to buy ;" what he has agreed to purchase, after trial and examination<sup>2</sup> of its qualities and defects, deeming it such as he desired, and free from blemish, and so forth. Or the sense may be ; what he has agreed to buy, having approved it after discussing the price.

## XI.

VRĪHASPATI :—LET a buyer himself examine the commodity and show it to others ; when, after inspection and approbation, he has accepted it, he shall not return it.

" AND show it to others ;" to confirm the examination. But if he wish to return a thing so examined, and do not show an excess in the price, which was unknown to him at the time of purchase, he shall pay a fine equal to a sixth part, as directed by YĀ'JNYAWALKYA. Such is the ultimate sense of the text.

## XII.

VYĀSA :—GRASS, wood, bricks, thread, *common grain not to be sown*, wine or other liquids, cloth, base or precious metals, ought to be inspected immediately.

" GRAIN," except seed ; for YĀ'JNYAWALKYA has declared, that the time, allowed for examining seed-grain, is ten days.

## XIII.

NĀREDA :—MILCH cattle should be examined within three days ; beasts of burden, within five ; but the examination of pearls, gems, and coral, must be within seven days ;

2. Of male slaves, within half a month ; of females, within one month ; of *rice and all other seeds*, within ten days ; of iron and wearing apparel, within one day.

SINCE one day is allowed by NA'REDA for the inspection of wearing apparel, the word, "immediately," in the text of VYA'SA should be taken in the same sense.

CHANDÉSWARA.

IT should not be said, that the term, one day, may signify immediately (*fadyab*); because one is necessarily denoted by this term, and *fadyab* is explained by AMERA, at the instant. The word, *fadyab*, ("immediately,") sometimes signifies on that day; but the term, one day, does not always signify immediately. However *fadyab* is formed by the suffix *dyab*, which conveys the sense of day.

IF it be said, that *in this text*, the direction for milch cattle to be examined within three days is superfluous, because it has the same meaning with the former text of NA'REDA, directing the buyer to pay a fifteenth part on the third day; or after that, the commodity is absolutely his own (V 2); some lawyers answer, "the former text lays down a special rule respecting things returnable in three days; but this text (XIII) allows three days for the examination of milch cattle; and MISRA has remarked on the former text (V 2), that the rule is applicable to those things, for the examination of which three days are allowed.

OTHERS, relying on the opinion of CHANDÉSWARA, hold, that the former text concerns cloth and other commodities liable to destruction by use, and regulates the particular consequences according to the particular day on which the commodity is returned; but this text regulates the other general effect of any how returning the thing within three days.

AFTER declaring the time allowed for trial and examination, in the same order as delivered by NA'REDA, the following text is cited in the *Retnácara*.

#### XIV.

VRĪHASPATI:—WITHIN those times, if a blemish be any where discovered in the commodity purchased, it must be returned to the seller, and the purchaser shall take back the price.

IN

IN this text there is a various reading, *sanjnyáyaté*, instead of *sanjayaté* be known or discovered; in both readings the sense is the same; for it is consistent with the reason of the law, and with the text of *CA'TYA'YANA*.

# XV.

*CA'TYA'YANA*:— BUT an unexamined commodity being bought and afterwards proved to have a blemish, it must be returned to its owner within the limited time, and not otherwise.

“ THE limited time;” the period allowed for trial and examination of it.  
“ Not otherwise;” not after the time allowed for inspection.

*The Retnácara.*

CONSEQUENTLY the purchase may be cancelled, if a blemish be discovered within the time limited for examination; but not, if a thing bought, and placed in the buyer's house, be accidentally damaged within the time allowed for detecting blemishes.

Is not this repugnant to the text of *MENU* (Book II, Chapter II, v. LXI); for by saying, it shall never be sold, the sale is declared illegal; and that shows a thing to be returnable even after the time allowed for inspection? If it were sold with a concealed blemish, then it may be returned even after a very long time. So the *Ghrintáreni*.

CONSEQUENTLY, if it were sold with a blemish known to both parties,\* it may be returned within the time limited for inspection; if it were fraudulently sold with a concealed blemish, it may be returned at any time.

ONE commodity mixed with another of inferior value, as saffron adulterated with safflower, *shall never be sold as unmixed*; nor a bad commodity, or one which has some blemish different from what is disclosed; nor less

\* So the MS I suspect an error, the author's meaning must surely be, sold with a blemish unknown to both parties.

than agreed on ; nor a thing kept at a distance, that its qualities and defects may not be known , nor a thing concealed, or covered with a cloth

The *Retnacara* \*.

BUT the author of the *Cbintamani*, after stating all this, adds, when any one of these *objections to the purchase* is discovered, the thing may be returned even after a very long time.

## XVI.

NA' REDA :—BUT a mantle, that has been worn, and is tattered and soiled, yet is bought with those known blemishes, cannot be returned to the seller.

THE text should be supplied , “ yet is bought with those *known* blemishes.” From parity of reasoning, it may extend also to other goods bought with such blemishes.

The *Retnacara*.

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† In a gloss on the text of Menu above cited (Book II, Chapter II, v. LXI)

## SECTION II.

## ON RESCISSION OF SALE.

## XVII.

NA'REDA:—WHEN a vendible thing, sold for a *just* price, is not delivered to the purchaser, this is called non-delivery of a thing sold, a title of judicial procedure.

THAT thing, which is not delivered, is called by this technical title. Or the relative is an epithet of the thing sold; the non-delivery of that *vendible* thing, which is sold but not delivered, is called a title of law. Or the terms may be uncompounded; *sale and non-delivery*. The same is intended by MENU in the term “rescission of sale.”

THE following text declares the rule in this case.

## XVIII.

NA'REDA:—HE then, who, having sold vendible property for a just price, delivers it not to the buyer, shall be compelled, if it be immovable, to pay for any subsequent damage, *as the loss of a crop and the like*; and if moveable, for the use and profits of it.

“SUBSEQUENT damage;” as loss by trespasses of *cattle* on the crop, and the like. “The use;” *literally* the work: as the carriage of burdens, and so forth. “Profits;” as milk and the like.

The *Retnâcara*.

THE *Cbintâmeni* gives a similar exposition. It must be observed, that the produce of land or the like ought also to be given. Some hold, that *ghṛāṇa* signifying inhabited ground, implies the rent of a habitation, conformably with

with the sense of the root *śhr̥*, which signifies to inhabit, as well as to go. But others say, that *śhr̥ya* denotes the loss of an expected crop, or the loss of house rent and so forth, and that this is meant in the gloss of the *Chintāmeni*, by the term, "loss of a crop or the like."

### XIX.

NA'REDA.—SHOULD the value be diminished *in the interval*, he shall deliver it together with the difference of the value: such is the rule for merchants in the same place; but, among those, who trade to foreign countries, the foreign profit must be made good *to the purchaser*.

If gems or the like, sold but not delivered by the vender, sink in value, if their price be gradually diminished, they shall be delivered to the purchaser with the difference of the value. But, among those, who trade to foreign countries, (among those, who are accustomed to travel to other countries, *for the purposes of commerce*,) the vender shall make good the profit, which might have been obtained by going to a foreign country

VA'CHESPATI MISRA

THE same exposition is delivered in the *Retnacara*. But others hold, that the rule concerning immoveable and moveable effects is stated generally in the first text (XVIII), and a particular rule is delivered in the second verse (XIX), for it is expressed conditionally. Thus, should the value of a thing, whether moveable or immoveable, be diminished, the difference of the value must be made good, as well as the damage and so forth, as directed in the first text and if any one of those things were fit for foreign trade, the foreign profit must be made good, as mentioned by MISRA; not the charge of transport and the like in the same country. It should not be objected, that almost all cattle and merchandise are fit for foreign trade. It is implied, that the purchaser bought the thing for that purpose, or that the cattle or goods were actually employed in foreign trade

### XX.

NA'REDA:—THIS rule has been declared for vendible commodities,

## SECTION II.

## ON RESCISSION OF SALE.

## XVII.

NA'REDA:—WHEN a vendible thing, sold for a *just* price, is not delivered to the purchaser, this is called non-delivery of a thing sold, a title of judicial procedure.

THAT thing, which is not delivered, is called by this technical title. Or the relative is an epithet of the thing sold; the non-delivery of that *vendible* thing, which is sold but not delivered, is called a title of law. Or the terms may be uncompounded, *sale and non delivery*. The same is intended by MENU in the term “rescission of sale”

THE following text declares the rule in this case.

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“SUBSEQUENT damage,” as loss by trespasses of *cattle* on the crop, and the like. “The use,” *literally* the work as the carriage of burdens, and so forth. “Profits,” as milk and the like.

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THE *Chintâment* gives a similar exposition. It must be observed, that the produce of land or the like ought also to be given. Some hold, that *chintâ* signifying inhabited ground, implies the rent of a habitation, conformably with

with the sense of the root *çkṛi*, which signifies to inhabit, as well as to go. But others say, that *çṣhaya* denotes the loss of an expected crop, or the loss of house rent and so forth; and that this is meant in the gloss of the *Ghintāmenī*, by the term, “loss of a crop or the like.”

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### XX.

NA'REDA:—THIS rule has been declared for vendible commodities,



modities, of which the price has been paid *or tendered*; but where it has not been paid *or tendered*, there is no injury to the buyer by *delaying the delivery*, unless there have been a special agreement *as to the times of delivery and payment*.

If the seller had received the whole price, he must pay for the damage and so forth; but there is no offence in his keeping the commodity to obtain payment.

MISRA.

CONSEQUENTLY, it is an offence to detain it knavishly, without a sufficient cause.

## XXI.

YA'JNYAWALAYA:—HE, who, having received the price of a thing sold, delivers not that thing to the buyer, shall be compelled to deliver it together with interest; or among those, who trade to foreign countries, with the foreign profit.

“INTEREST” must be understood to be an increase on account of the difference of price. But, in a gloss on the text of NA'REDA, an opinion is advanced in the *Mitācsharā*, that the profit, which would have arisen from the sale of the commodity, must be made good; or twice, or thrice the rent of a house, or the like; or the rate of *interest* directed under the title of loans; at the option of the buyer.

## XXII.

VISHNU:—HE, who having received the price of a thing sold, delivers not that thing to the buyer, shall be *made to pay him the value of it with damages* and be fined a hundred *panas* of copper to the king.\*

THIS text also has the same import with that of NA'REDA; but further directs an amercement.

\* I insert the whole text, as it is cited in other works; a part of it seems to have been here omitted by mistake. T.

## XXIII.

MENU:—A MAN, who has bought or sold any thing in this world, *that has a fixed price and is not perishable, as land or metals*, and wishes to rescind the contract, may give or take back such a thing within ten days;\*

2. But, after ten days, he shall neither give nor take it back: the giver or the taker, *except by consent*, shall be fined by the king six hundred *panas*.

HE, who wishes to rescind the contract, (who wishes it annulled; who repents of it;) may give back *the price, or the commodity*, to the other; *that is*, may return it. The buyer may give it back to the seller; or the seller may take it back from the buyer. This regards grain to be sown and things which are not perishable, as a house, land, a car and the like, excepting iron, beasts of burden and the rest.

The *Retndcara*.

FOR the time allowed for the trial and examination of iron and the rest, is limited by particular texts (VI &c.); and in some instances, it is limited to three days. A period of ten days is allowed for rescinding the purchase of a house or of land; from *the parity of the case*, the same should be allowed for the rescission of sale: and it is equitable, that the period should be limited to three days for the rescission of sale in the case of iron or the like, as directed *for the rescission of purchase* (VI).

HE, who has bought or sold any article in this world, that has a fixed price and is not perishable, as land, or copper, or the like, and repents of the contract, thinking it ill made, may return the goods within ten days, or may take back the thing sold.

CULLU'GABHATTA.

THIS text may relate to things purchased without examination; for it seems to be so established in the section on rescission of purchase: it may also be understood of a sale made by mistake.

\* The first verse has been already cited (VII).

BUT other lawyers maintain, that this text, and what is suggested by the text of YA'JNYAWALKYA (VII), may also relate to a thing bought after examination. It is the buyer's own fault if he examine not the commodity. But *the rule, that under certain circumstances a thing cannot be returned to the seller, takes effect after ten days and so forth.* Yet, even in that case, it should have been inspected and approved (XI), to obviate *the risk of concealed blemishes.* However, under the rule regarding commodities inspected and approved (XI), if an agreement be formally made to this effect, "this is approved by me; even though blemished, it shall not be returned;" such a commodity can on no account be returned. This is intended, and the text of MENU (XXIII) supposes such an agreement.

"SIX hundred" (XXIII 2); six hundred *panas*.

CULLU'CABHATTA and CHANDESWARA.

"THE giver or the taker," the buyer giving it back, or the seller taking it back. According to the *Retnâcara* and the rest, this text should properly be restricted to things bought without examination.

#### XXIV.

MENU:—By this law, in all business whatever here below, must the judge confine, within the path of rectitude, a person inclined to rescind his contract of sale and purchase.

"ALL business whatever;" by this expression, the law concerning rescission of purchase and sale is extended to other worldly affairs. Consequently, there is no offence in rescinding, within ten days, a contract for a loan, for an association, or for service, or a promise of wages, or the like. But, after that period, those promises may not be broken; *or if they be retracted*, a fine of six hundred *panas* must be paid to the king. This is consistent with the opinions of CHANDE'SWARA and CULLU'CABHATTA; but a fine may be inferred without a particular rule.

"By this law" (XXIV); by the law declared under the head of rescission of sale.

## XXV.

CA'TYA'YANA :—HE, who accepts not a thing which he has bought and secured, and he, who delivers not, free from blemish, *a thing which he has sold*, shall *each* take back his own property, forfeiting a tenth part of the price.

“ SECURED ;” *literally* received: brought into his power.

The *Retnácara* and *Cbintámeni*.

“ EACH shall take back his own property ;” the buyer shall take back the price ; and the seller shall take back the commodity : for, under the authority of the text, the right of property has not been transferred in this case. But the sage propounds a distinction in regard to a thing of which possession has not been taken.

## XXVI.

CA'TYA'YANA :—YET, if the thing were not secured, though a formal contract were made, and the purchaser accept it not, the same rule *for rescission within ten days*, prevails ; but, after ten days, the contract may not be rescinded.

“ A FORMAL contract ;” an attested writing or the like. Although such a contract be made, if possession of the commodity have not been secured, the purchaser does not forfeit a tenth part *of the price*, on returning it within ten days ; but, after that period, a thing, of which the blemish was known, cannot be returned.

The *Cbintámeni*.

THE meaning is, that, if a mere agreement for purchase were made, and the goods be not accepted, there is no penalty of a tenth part *of the price* ; but, after the limited time, nothing can be returned, even though a mere agreement had been made. As for returning a blemished commodity, even after the limited time, that is restricted to the case of a concealed blemish ; it is not permitted, if the blemish were disclosed at the time of the sale.

## XXVII.

## XXVII.

NA'REDA:—SHOULD the thing sold be injured, or burned, or carried away, *after the time, when it ought to have been delivered*, the loss shall fall on the vender, who delivered it not, when he ought.

“WHO delivered it not, when he ought;” who, without rescinding the contract, tendered it not, even though a demand were not *formally* made: *in this case, the loss falls on the vender*, unless the commodity be injured by the act of GOD or of the king. But, after a demand, the loss falls on the vender, even though the injury happen by the act of GOD or of the king; and he must make it good to the purchaser.

## XXVIII.

YA'JNYAWALCYA:—SHOULD a commodity sold, but not delivered on demand *with tender of payment*, be injured by the act of GOD or of the king, the loss shall fall on the vender.

AGAIN, if the vender, without rescinding the contract, deliver not the commodity, though demanded by the purchaser, and it be injured by the act of GOD or of the king, that loss falls on the vender; therefore another unblemished commodity, similar to that which has been damaged, must be delivered to the buyer.

The *Mitácbarí*.

It appears from the mention of a demand, in the text of YA'JNYAWALCYA, that the vender shall not be compelled to make it good, if a thing undemanded be injured by the act of GOD or of the king. As a demand is not specified in the text of NA'REDA (XXVII), it should seem, that the vender must make good *the value of the thing*, though *it had not been demanded*, if it be injured by his own negligence, without the act of GOD or of the king; but the vender shall not be compelled to make it good, if destroyed by the effect of time, before it be demanded.

YET, if a buyer, repenting of his purchase, accept not the thing, and it be afterwards destroyed by the act of GOD or of the king, the loss falls on him.

XXIX.

## XXIX.

YA'JNYAWALCYA:—If the first vendee refuse to receive the thing sold, it may be sold to another; and, if a loss arise by the fault of the vendee, on him alone shall it fall.

SHOULD the first buyer, repenting of his purchase, refuse to receive the commodity; it may be sold to any other purchaser, who may offer. The first hemistich is thus expounded in the *Mitácshara*.

HERE no reference to the time limited for rescission of purchase is hinted by the sage or commentator: and according to the *Mitácshará*, the last hemistich establishes, that the loss falls on the vendee, if no other purchaser offer for that thing, and it be destroyed by the act of God or of the king; for the loss happens through the fault of the purchaser in refusing to receive the commodity.

## XXX.

NA'REDA:—He, who having shown a *specimen* of property free from blemish, delivers blemished property, shall be made to pay double the price *to the vendee*, and a fine to the same amount.

By directing, that double the price shall be paid, if blemished property be sold, after showing unblemished goods to determine the price, the necessity of delivering the blemished property is denied. But the sage has not declared, that the unblemished thing, which was shown, shall be delivered.

## XXXI.

VRĪHASPATI:—THE dishonest man, who sells a commodity, knowing its blemish, *but not disclosing it*, shall pay double the price of it *to the vendee*, and a fine of equal amount *to the king*.

“THE price of it,” the word “it” bearing an apparent allusion to what

has preceded, and "sells" signifying 'gives after receiving a price,' the allusion is to the price proposed for NA'REDA has stated it in a single phrase; and the word price, in his text (XXX), signifies the stipulated *consideration*, and cannot be applied in a secondary sense to *the value of the commodity delivered*. Or it may be thus explained, since the text of NA'REDA directs payment of double the price, if blemished property be sold after showing unblemished goods, twice the value of the commodity must be paid, if blemished property be shown and delivered without disclosing the blemish, for in the text of VRĪHASPATI the word "it," being referred to the principal subject, alludes to the commodity, which was originally proposed for sale.

"WHO sells a commodity (XXXI)," who sells it without disclosing the blemish. The Retnacara.

### XXXII

YA'JNYAWALCYA:—IF a man sell to one what had been *already sold by him* to another, or a blemished commodity as unblemished, the fine shall be double the price of the thing.

AGAIN, he, who sells to one a thing already sold to another, or vends a blemished commodity, of which he conceals the blemish, shall be fined in double the price of that commodity. This is implied by the interpretation first stated in the exposition of the first hemistich, as delivered in the *Mitacsharā*.

### XXXIII

NA'REDA:—HE, who sells a commodity to one man, and delivers it to another *unauthorized to receive it*, shall also pay double the price, and a fine to the same amount.

AFTER agreeing for the price of that thing with one man, if a man afterwards relinquish it to another, he also shall be compelled to pay double the value and a fine to the same amount.

The Retnacara

IN this case the first contract shall prevail (Book II, Chap. II, v. XXVIII). To whom shall twice the value be paid? To him, who does not obtain the chattel purchased. This should be understood as the sense of the text, because no person is specified.

HERE a difference occurs in the *Retnâcara* and *Mitâcsharâ*; one stating the penalty at double the value of the thing; the other, at double its price. It may be reconciled by supposing the price and the value of the thing to be the same.

#### XXXIV.

NA'EDA :—BUT, if a vendee refuse to accept the commodity which he has bought, when it is offered, the vender commits no offence, if he sell it to another.

#### XXXV.

YA'JNYAWALCYA, cited in the *Retnâcara* and *Chintâmeni*:—He shall be compelled to repay two fold a sum received as earnest.

WHAT is voluntarily delivered to the seller, by the purchaser, for the purpose of ratifying the bargain, is meant by the word "earnest:" and the vender must pay twice the amount, if he afterwards cancel the sale.

*The Retnâcara.*

HERE it is not directed, that twice the value of the thing shall be recovered; but twice the amount deposited to complete the bargain. This is the full purport of the text.

#### XXXVI.

VYA'SA :—BY him, who has given earnest, and appointed no specifick time for delivery, it shall be forfeited, if he refuse to accept the commodity when offered.

THE amount, which the vendee has given as earnest on account of the purchase,



chafe, is forfeited to the vender, if the buyer refuse to receive the commodity when tendered. Therefore that amount shall not be recovered by the purchaser from the vender.

The *Retnâcara*.

In this case it appears, that forfeiture of the amount paid as earnest is the only penalty *imposed* on the vendee. But the text of YA'JNYAWALKYA (XXXV) being thus expounded in the *Cbintâmeni*; "what is given by the vendee, and received by the vender promising to sell his own vendible property, is received as earnest, and twice its amount shall be paid to the purchaser by the vender repenting of the sale;" what is deposited to complete the bargain, is denoted by the word earnest.

THIS text (XXXV) is placed by YA'JNYAWALKYA himself under the title of loans and payment, and is expounded by VIJNYA'NE'SWARA, as relating to pledges. \*

### XXXVII.

VRĪHASPATI:—WHAT has been sold, at a low price, by a man inebriated or insane, or through fear, or by one not his own master, or by an idiot, shall be given back, or may be taken *forcibly* from the buyer.

"SHALL be given back *by the purchaser of it*;" the text should be thus supplied. "At a low price;" this is connected with all the terms of the sentence: thus the meaning is, "what has been sold, at a low price, by a man inebriated or the like." Consequently, *if it be* sold for a fair price by a man inebriated, *the sale* is valid; and *if it be* sold at a low price by a man sound of mind, *the sale* is also valid. Thus some explain the law: but that induction is wrong; for even the sale of a thing, which ought not to be sold, might be valid, *though made* by a man intoxicated. Therefore the full sense is, that a sale made by mistake, for a low price, is void: and in this case, as sixteen void gifts are declared under the title of subtraction of what has been given, so, from parity of reasoning, there may be sixteen void sales. Thus others expound the law.

NA'REDA:—THE purchase and sale of all commodities by merchants are made with a view to gain; and that gain arises from the receipt of the price, be it great or small:

2. Therefore, *when a price has not been stipulated*, let some merchant, who knows the prices of commodities, fix it according to place and time; let him not act crookedly: the straight path is the best in all mercantile business.

If a thing be sold without stipulating its price, let a merchant determine it according to time and place, and fix a proper value: let him not act crookedly, or fraudulently; let him not deviate from propriety in regard to the price.

CHANDÉSWARA.

## XXXIX.

YA'JNYAWALCYA:—HE, who falsifies scales, market rates, measures, or standard coins, and he, who uses them, shall both be forced to pay the highest amercement.

“ SCALES,” or balance; the scales and beam. “ Market rates ” (literally commands); the king's written precept *regulating market rates*. “ Measures;” as a *prast'ba*, a *dróna*, and the like. “ Coins;” money stamped; as a *bherma*, a *nishca*, or the like. Both he, who falsifies these, (who makes them different from the general standard of the country, whether less or more, or stamps money, such as a *bherma* and the like, in an unusual manner, or alloys it with copper or other *base metal*,) and he, who uses them, knowing them to be false, shall each be fined in the highest amercement.

VIJNYA'NÉSWARA.

THE sage propounds a law concerning the trial and examination of coins.

## XL.

YA'JNYAWALCYA:—THAT examiner of coins, who declares  
bad

bad money good, or good money bad, shall be compelled to pay the highest amercement.

He again, who, on examining coins, declares a coin to be good, which is *over* alloyed with copper or the like, or who declares a true coin to be false, shall be fined in the highest amercement.

The *Mitacshará*.

A SIMILAR fine might be imposed on those, who declare true weights or measures to be false, but it is not directed in this case, because their offence is less than that of an examiner of coins, by reason of the grossness of weights and measures compared with coins.

#### XLII.

YA'JNYAWALCYA:—BUT he, who cheats in weights or measures to the amount of an eighth part, shall be forced to pay a fine of two hundred *pan'as*; and proportionably if the fraud be greater or less.

He again, who defrauds *another*, by false weight or measure, to the amount of an eighth part of the vendible property, whether it be grain in the husk, cotton, or the like, shall be fined in two hundred *pan'as*, and if the amount of the fraud be more or less, the fine also shall be proportionably more or less.

The *Mitacshará*.

In this case, if the fraud be less than an eighth part, the amercement shall be less, if the fraud be greater, the amercement shall be higher. Thus some expound the law.

#### XLIII.

YA'JNYAWALCYA:—A MAN, who adulterates vendible property, such as drugs, oil, salt, perfumes, grain, sugar, or the like, shall be compelled to pay sixteen *pan'as*.

“DRUGS,” medicinal substances. “Oil,” *comprehending* clarified but-

ter and the like. "Perfumes," as *usira*, or the root of *virana* grafts,\* and the like. The expression, "or the like," comprehends *asafætida*, pepper, and other things. The fine for mingling inferiour substances with these, for the purpose of sale is sixteen *panas*.

### XLIII

YA'JNYAWALCYA —THE fine for disguising the nature of earth, leather, beads, thread, iron, wood, bark, and cloth, is eight times the amount of the sale.

GIVING to earth and the rest, for the purpose of sale, the *appearance of a thing of a precious nature*, which it *really* is not, or making it to resemble a thing of a valuable nature, by the addition of a different odour, colour, or juice For instance, counterfeiting fragrant *amalacá*† by adding the odour of the flower *mellica*‡ to a piece of earth, or the skin of a tiger by colouring the skin of a cat, or a ruby, by tinging a glass bead with another hue, or silken thread, by giving a glossy appearance to cotton thread, or silver, by polishing black iron, or sanders wood, by adding the odour of that to the wood of the *bilwa*§, or passing the *thorny bark* of the *caccola*¶ for cloves, or counterfeiting wove silk by raising a glossy appearance on cotton cloth, *in such cases*, the fine is eight times the value of the commodity, whether earth, leather, or the like, made to resemble *another thing* and sold *in its stead*.

The *Mitácshará*.

OTHERS hold, that the fine is eight times the value of the fragrant *amalaca*, which it was called when sold, and which was expected by the purchaser.

### XLIV.

YA'JNYAWALCYA —THE fine also for one, who delivers, in pledge or sale, a thing changed under seal, or a fictitious valuable, is thus regulated,

2. For a thing worth less than a *pana*, the fine is fifty *panas*,

\* Aromatick Andropogon † *Phyllanthus emblica* ‡ *Nyctanthes undulata*. § *Cratogeomys marm. lss.*  
 ¶ The *Badari* vulgarly called *Es r*, a plant of the genus *Rhamnus*

for one *pañā*, a hundred; for two *pañas*, two hundred; for a greater value, a higher amercement.

“ UNDER seal,” what has the cover of a seal *or the like*, as a casket. “ A thing changed;” of him who fraudulently substitutes, by flight of hand, a casket full of beads, for another casket, which he showed full of pearls, and of him, who delivers, in sale or pawn, a fictitious valuable, as *counterfeited* musk or the like, “ the fine is thus regulated.” *or it will be now delivered; or it should be thus understood.* If the price of the fictitious musk, or the like, be less than one *pañā*, the penalty for selling that fictitious article is fifty *pañās*; if the price be one *pañā*, a hundred *pañās*; if the price be two *pañās*, two hundred *pañās*: in like manner, if the price be greater, a higher fine should be inferred.

VIJNYA'NESWARA.

OTHERS deem it proper to determine the fine, in a case of *fraudulent* sale, according to the number of *pañās* in the price received; and, in the case of a *fraudulent* pledge, according to the number of *pañās* in the value of the commodity, under the name of which the thing was delivered. Hence, although the fine be very heavy, it must be borne, because it is directed by the text.

#### XLV.

YA'JNYAWALCYA:—THE highest amercement is directed for traders combining to maintain the price against labourers and artisans, *although* acquainted with the rise or fall of the price.

IF traders, knowing an increase or decrease in the market rates as regulated by the king, conspire, through avarice, to maintain the former price against labourers, as washermen or the like; and against artisans, as painters and the rest; they shall be fined one thousand *pañās*.

The *Mitācflarā*.

OTHERS hold, that if labourers, artisans, and traders, knowing the rise or fall of the market rates, maintain the price, (that is, keep up the former rates,) they shall be fined.

XLVI.

## XLVI.

YA'JNYAWALCYA:—THE fine on traders, who combine to obtain or to vend goods at wrong prices, is fixed at the highest amercement.

FOR those merchants again, who combine and stop foreign commodities, which they want at a wrong price below the market rate, or who sell goods at prices exceeding the market rate, the fine, ordained by MEANU and others, is the highest amercement.

The *Mitácsharí*.

THE meaning, which results therefrom, is, that a fine is directed for the offence of raising or lessening the market rates fixed by the king. The sage declares, that purchase and sale should be conducted according to the prices regulated by the sovereign.

## LXVII.

YA'JNYAWALCYA:—PURCHASE or sale should be daily conducted according to the *market* prices, which are fixed by kings; the difference thereof is the legal profit of traders.

IF the king be near, according to that price, which is fixed or regulated by him, should daily purchase or sale be conducted. The difference, or remainder, of those prices regulated by the king, is the only profit of traders; for they may not alter the rates at their own choice.

The *Mitácshará*.

"IF the king be near;" but, if he be not near, the market prices should be regulated by his officers, and should be reported to him: else there may be apprehension of wicked practices. On this account, the word king is used in the plural; it has here a secondary sense, as in the expression, "the king moves;" meaning *him and his retinue*.

DISTINCT prices should be fixed for purchase and sale, according to the abundance or paucity of purchasers.

## XLVIII.

MENU:—ONCE in five nights, or at the close of every half month, or of every month, *according to the nature of the commodities*, let the king make a regulation for market prices in the presence of those *experienced men*.

ONCE in five nights, or at the close of every fortnight, or of every month, according to the variableness, even tenour, or great uniformity of the price. In like manner, other occasions *for frequent or rare changes* may be also understood. The term “king” is here used generally; intending also the king’s officers.

## XLIX.

YA’JNYAWALKYA declares the mode of regulating market prices:—ON commodities of the same country, a trader, who buys and sells again immediately, may receive five in the hundred; but on those of other countries, ten in the hundred.

HE, who sells a commodity, which he obtained in the same country, may take a profit of five in the hundred (that is, five *pañās* in one hundred *pañās*); and, if the commodity were obtained in another country, he may take a profit of ten *pañās* on the value of one hundred *pañās*; *that is*, if an opportunity of sale occur on the same day, on which the commodity was received. But to him again, who sells the commodity at a subsequent time, a greater profit must be allowed, because a greater time elapses. The market prices of various commodities should be so regulated by the king, in his own dominions, that there may be a profit of five *pañās* in a hundred, on the regulated prices.

The *Mitācsharā*.

In this instance another, or a foreign, country should not be assumed, from the description *quoted in a former chapter*; “where language differs, or a mountain intervenes &c;” \* for that is barred by the condition mentioned,

“ who buys and sells immediately.” But a greater profit may be determined from a man’s own judgment, at the distance of a *Yūjana* or the like from the market where the purchase was made, according to the difference of charges. Such is the meaning of the text.

WHAT price may be taken by him, who buys from a man to sell again, is determined, after regulating the market prices for the purchase of commodities bought for consumption.

## L.

YA’JNYAWALCYA :—ADDING the incidental charges to the first cost of the commodity, let a price be fixed, which shall be equitable both to the buyer and the seller.

So much as is the amount of charges incident to the fabrication or purchase of the commodity ; adding that, and the king’s taxes, and the charges of subsistence, of boat hire and the like, let a price be fixed : and in that case, if the seller happen to pay all the *estimated* charges, the buyer could obtain no *subsequent* profit ; or if the buyer kept all the *computed* profit, the seller ought not to be liable for any *previous* charges : therefore the price should not be so regulated ; but equitably both for the buyer and seller, to obviate excessive loss. Such is the sense ; and VIJNYA’NE’SWARA so expounds this text ; but it is cited by him with a remark, that “ the sage declares the “ mode of regulating the price of a foreign commodity.” Yet in fact it is only an example of the mode of regulating market prices ; the regulation should be formed on a man’s own judgment. Sometimes, from the price happening to rise, the profit is five hundred *pañās* on a hundred ; sometimes a man may even lose his capital : for the ruler of *events* governs the *fluctuations* of price. Consequently, the market rates should be fixed according to the prices of several countries, according to time, to *charges* of safe custody and the like.

## LI.

NA’REDA :—THE value of apparel once washed is diminished an eighth part ; twice *washed*, a fourth ; thrice *washed*, a third ; and four times washed, a half : 2. At-



2. AFTERWARDS a deduction of a quarter, from the half reduced value, is successively made, until the fringe be wasted, and the cloth tattered ; *but* for tattered cloth there is no regulated deduction.

HERE it should be observed, that barter is in fact a sale ; and the same rules should be admitted, in the forms of judicial procedure, *for barter* and for sale : else the rules concerning it are no where delivered. But there is some distinction in law : delivery, after receiving a consideration any how settled by way of price, is sale ; delivery, after receiving a consideration settled by way of equivalent, is barter. The equivalent should be of the same nature ; and both things, to be bartered, should be equal in quantity ; or, if one be double of the other, or the like, they should be equal in pecuniary value : or more or less *under other circumstances*, at the option of the parties. Thus, in an exchange of *tila* or similar grain, for peas or pulse, the equal value, not the similar nature, is required : namely, such value as would arise from the sale of the article ; for instance, from exchanging *tila* or other grain, for shells, *pañās* of copper, silver coins, or the like. More may be determined by the mere exertion of a man's own intellect. *The law has been thus concisely propounded.*

## CHAPTER IV.

ON THE OWNERS OF CATTLE AND THEIR HERDSMEN.

## SECTION I.

ON THE WAGES OF HERDSMEN, AND ON LOSSES OF CATTLE.

HAVING propounded certain engagements, suggested by the obligations of master and servant, MENU declares the law concerning disputes arising from the fault of a particular servant, namely the herdsman.

## I.

MENU:—I NOW will decide exactly, according to the principles of law, the contests usually arising from the fault of such as own herds of cattle, and of such as are hired to keep them.

“CATTLE,” which become the subject of dispute.

*The Retnacara.*

OTHERS explain the text, “I will decide exactly the contests between owners of cattle and *their* herdsmen”

To determine suits concerning wages, the sage declares the rule for them.

## II.

MENU:—THAT hired servant, whose wages are paid with  
5 T
milk,

milk, may, with the assent of the owner, milk the best cow out of ten : such are the wages of hired herdsmen.

“ WHOSE wages are paid in milk,” hired for a recompense so paid, one whose wages are milk alone. He shall milk whichever is the best among ten cows. This milking of one cow *in ten* constitutes the wages of a herdsman hired for an allowance of food, clothes and the like

The *Retnacara*.

IN the *Chintamani* a similar exposition is given, and it is added, in the *Menwirthamuctavali*, that the herdsman must keep ten cows, for the milk of one, which is allowed him, and he must also milk them. But others explain “ hired ” (in the latter part of the text) a servant. It follows therefore, that an attendant on cattle also is a servant, and the text coincides with that of VRĪHASPATI (Chapter I).

### III.

NA'REDA:—FOR a hundred head of cattle, the annual wages of the herdsman are a heifer three years old, for two hundred, a milch cow, and the milk of the whole herd every eighth day.

“ FOR a hundred head of cattle,” kept by him; and so for two hundred. The term employed in the text signifies a heifer three years old “ The milk of the whole herd,” the milking of all the milch cows.

The *Retnacara*.

### IV.

VRĪHASPATI:—A servant, hired for attendance on the milch cattle of another, shall receive the whole milk every eighth day.

HERE is an optional alternative; the milk of one cow out of ten, or the milk of all the cows every eighth day, allowed as wages. But NA'REDA has further mentioned a heifer three years old. Neither is this a third case, for

for it cannot alone suffice for wages. Nor should it be affirmed, that the milk of the whole herd every eighth day, the milk of one cow out of ten every day, and a heifer *year by year* form the very same case; for there is no mutual reference between the *texts of these* sages. The milk of one best cow, in ten, is equal to the milk of all the cows, good and bad, at the end of every eighth day, or on every ninth day. In the case propounded by NA'REDA, since some of the hundred cows afford no milk, a heifer three years old is allowed as wages for attending such cattle. Thus others *explain the law*. From the special mention of one, whose wages are paid with milk, another form is to be understood for the wages of one, who is paid in money; and that is propounded in the chapter on the non-payment of wages and hire.

NA'REDA declares what should be done by a herdsman.

## V.

NA'REDA:—LET the owner each day commit his cattle to the charge of the herdsman, as soon as night ends; and in the evening, let the herdsman restore them to their owner, having seen them well satisfied with grafs and with water.

“ COMMIT his cattle ” to be kept *by the herdsman*. “ Restore them after having seen them well satisfied with grafs and with water; ” restore them after they have eaten grafs and drunk water. “ In the evening, ” let the herdsman restore them; let him deliver them to their owner, when little of the day remains.

The *Retnácara*.

THE *Cbintámeni* furnishes the same explanation. The meaning is, that the cows are intrusted to the herdsman for pasture and water only.

## VI.

YA'JNYAWALCYA: — LET the herdsman restore the cattle each evening, in the same condition in which he received

ed them : for such, as have been seized or killed through his negligence, he shall pay, if he had made an agreement for wages.

“ THROUGH his negligence :” *if cattle be seized or killed, through his own fault, the herdsman shall be compelled to make good the loss to the owner, if he had made an agreement for wages, that is, if wages had been stipulated. So the Mitâcflara and the very same exposition is delivered in the Retnâcara.*

By this condition (“ if he had made an agreement for wages”) it is intimated, that he, who attends cattle without wages, shall not be compelled to make good the loss. But to him, who attends cattle as a favour, even the favour conferred by him is his hire and he, who, even without wages, makes a promise in this form, “ I must inevitably restore the cattle,” shall also be compelled to make good the loss. Such should be the decision.

## VII

MENU and NA'REDA. — BUT he shall not be compelled to make it good, when robbers have carried it away notwithstanding his exertions, provided he give notice to his master in a proper place and season.

“ IN place and season” proper for such notice.

*The Retnacara and Chintament*

IN fact the sense is this, not neglecting the proper place and season, if he give immediate notice to his master. CULLUCABHATTA gives the very same exposition

## VIII

VYASA. — THE herdsman is not chargeable, if he be made captive, if the village be overpowered, or if the district be thrown into confusion, and any of the cattle be seized or destroyed.

“ IF

“ IF he be made captive ;” if he be seized and detained, and so forth.

The *Retnācara*.

IN fact, if the loss or injury happen through want of care on the part of the appointed herdsman, though he were able *to defend the cattle*, blame is imputable to him ; but not, if he were unable *to defend the herd*.

### IX.

MENU : — BY day the blame falls on the herdsman ; by night on the owner, *if the cattle be fed and kept in his own house* ; but, if the place of their food and custody be different, the keeper incurs the blame.\*

BY day, if any fault occur in regard to the food and custody of cattle ceded in the hands of the herdsman, the blame falls on him ; by night, that happen to cattle restored by the herdsman and standing in the owner's house, it is the owner's fault ; but otherwise (if they remain even night in the herdsman's charge), should any fault occur, the herdsman incurs censure. So CULLÚCABHATTA. In the *Retnācara* the same *explication is given*.

GREATER wages should be stipulated for the herdsman, when the agreement is for attendance by day and night. The expression, “ the blame is on the owner,” is intended to denote, that the herdsman shall not be compelled to make good the loss ; *that the fine must be paid by the owner*, if the cattle be damaged and the like ; and *that he must perform penance*, if the cattle die, and so forth.

VRĪHASPATI declares the mode in which a herdsman should defend the cattle.

### X.

VRĪHASPATI : — LET the herdsman preserve the cattle from

\* In Book I, an anonymous text is quoted, which differs from this in the last hemistich ; “ but, if they have the care of them at night also, the owner shares no blame.”

danger of insects and reptiles, of robbers and tigers, and from falling into caverns or pits, let him defend them to the utmost of his power; let him call aloud for help, or give notice to his master.

LET him guard them from caverns or dens, and from pits or cavities. Let him preserve them, to the utmost of his power, from danger of insects or reptiles and the like “ Let him call aloud for help,” that is, let him make others hear *his cries*. The *Retnacara*.

“ LET him defend them,” let him rescue them. If the cattle be in imminent danger from a tiger or the like, let him call people to assist in protecting them, or if that be impossible, let him instantly give notice to his master, that he may endeavour to save them. Thus others interpret the text.

## XI.

NA'REDA:—If a cow be in danger, let the herdsman defend her to the utmost of his power; but if he be unable to *protect* her, let him hasten and give notice to his master.

2. A HERDSMAN, who preserves not a cow from accidents, who gives no alarm and informs not his master, when she is in danger, shall pay the value of her to *her owner*, and a fine to the king.

“ DANGER,” distress. “ Let him defend her,” or in the case of his inability, let him call aloud *for help* “ Shall pay the value of her” (XI 2), literally bear *the loss* he shall pay for that cow.

The *Retnacara*.

Cow is mentioned generally, comprehending other sorts of cattle.

## XII.

MENU and NA'REDA:—THE herdsman himself shall make good

good the loss of a beast, which, through his want of due care, has strayed, has been destroyed by reptiles, or killed by dogs, or has died by falling into a pit.

“ Has strayed;” or has been seized, or “ destroyed.” By whom destroyed? The construction of the sentence answers that question; “ by reptiles.” “ Taken by himself,” (for CHANDÉSWARA reads *swahatam*, which is explained, taken by himself, instead of *swahatam*, killed by dogs; this also comprehends seized by another. “ Has died by falling into a pit;” or has died on a mountain of difficult access, or the like. “ Through his want of due care;” of the care, which should be used by a herdsman.

The *Retnācara*.

THE cattle is lost through want of the care due from the herdsman; hence the blame, imputable to that herdsman, is a cause for his making good the loss.

The *Chintāmenti*.

“ STRAYED;” passed out of sight. Has been “ destroyed by reptiles, or killed or bitten by dogs, or has died by falling into a pit or the like.” and these are *only* examples; if a cow or other beast die, or stray, through want of such manly exertion for its preservation, as is due from the herdsman, he must make it good to the owner.

COLLŌCABHATTĀ.

ACCORDING to him, the reading is *śrabhāt* with a palatal ‘S; but according to the *Retnācara*, it is read with the dental S.

### XIII.

YA’JNYAWALKYA :—ON the loss of a beast by the herdsman, the fine ordained for him is *two* and a half; and he shall pay the value of the owner.

ON the loss of a beast by the loss of the herdsman.



pay a fine of thirteen *pañās* and a half, and *make good* the property lost, to the owner; that is, the value of the beast as determined by arbitrators. The verse is *intended* to regulate the amount of the fine; the rest had been already propounded.

The *Mitácsharā*.

“THE verse;” this text (XIII). “The rest,” (the payment of the value to the owner,) already propounded (VI), is thus repeated. Such is the meaning *of the gloss*.

HERE “the property lost” signifies its price.

The *Retnācara*.

AND thus, whenever it is declared in this chapter, that property must be made good, its price is intended; for the property *itself* is lost or destroyed. VISHNU expressly mentions the price.

#### XIV.

VISHNU:—BY day, if cattle be in danger from venom or fire, and the herdsman go not *to their assistance*, he shall pay, to their owner, the price of cattle *thus* destroyed by his fault; and, if he milk them without permission, he shall be fined twenty-five *cārjhalāpanas*.

“Go not;” if he do not go to protect them. “*Cārjhalāpana*” will be explained.

The *Retnācara*.

MEANING, that it will be explained in the chapter on measures.

BUT others remark, that the expression, “by day,” denotes the time, whatever it be, during which the cattle are intrusted to the herdsman for custody. “If he go not,” though able; meaning his not defending the cattle, through negligence, indolence, knavery, or the like. MENU *thus* explains a *cārjhalāpana*; “A *carśla* (or eighty *raślicāts*) of copper is called a *pañā*”



YA'JNYAWALKYA, a fine shall *also* be paid; and the forfeiture of the herdsman's wages is intimated in the *Brähmë purāna*. Such is the concise statement of the law.

“ If a cow die by the violence of disease or the like ” (XV 3): if she be destroyed by sickness or the like, in consequence of her owner taking no pains to heal or relieve her, though able to give relief; in that case he shall be fined by the king, and be forced to pay the wages due to the herdsman.

The *Retnâcara*.

HERE the fine to be paid by the owner of the cow must be that which is specified under the supplementary or miscellaneous title; for there is no person to sue *the offender*; and in this case a taint of sin is the consequence of taking no care of the *diseased* cow.

#### XVI.

MENU and NA'REDA:—A FLOCK of goats or of sheep being attacked by wolves, and the keeper not going to *repel the attack*, he shall be responsible for every one of them, which a wolf shall violently kill;

2. But, if any one of them, while they graze together near a wood, and the shepherd keeps them in order, shall be suddenly killed by a wolf springing on it, he shall not in that case be responsible.

UNDER the term, “ a flock of goats or of sheep,” are comprehended *all* beasts liable to attacks. “ Being attacked;” being assailed. So the *Retnâcara*. CULLŪCABHATTA delivers the very same interpretation.

“ If any one of them &c;” if a wolf, springing unperceived out of some thicket, kill any one of those goats or sheep, which were intrusted to the shepherd and were grazing together in the forest, the shepherd does not in that case incur blame.

CULLŪCABHATTA.

Bur,

BUT, if the herdsman carelessly pasture the cattle in a dangerous spot, although there be safe places for pasturage, blame is imputable to him; but not, in case of a casual attack by a tiger.

## XVII.

NA'REDA.—BY this rule shall a dispute with the keeper of all sorts of cattle be decided; and, if any cows die naturally, he shall be cleared by producing their tails and horns.

“ BY this rule &c.,” thus have been declared contests with keepers of all sorts of cattle, even of horses and the like.

*The Retnâcara.*

CONSEQUENTLY, in a dispute with a keeper of horses, the very rule, which has been declared, must be applied *as in other cases specified*.

“ BY producing their tails and horns,” let him prove their death in any mode whatever.

*The Chintâmini.*

ELSE there might be suspicion of his having sold them.

## XVIII.

MENU:—WHEN cattle die, let him carry to his master their ears, their hides, their tails, the skin below their navels, their tendons, and the liquor exuding from their foreheads: let him also point out their limbs.

“ THEIR ears &c.” under these are comprehended any tokens of the dead beast, not common to, or perfectly similar to, all animals. “ When cattle die.” when they die at remote distances, “ let him point out their limbs,” their durable parts, as horns and the rest. In some places, the text is read, “ point out their horns or the like:” on that reading, other tokens, besides those generally carried as above mentioned, are comprehended under the term “ or the like.”

SECTION

## SECTION II.

## ON FINES FOR MISCHIEF DONE BY CATTLE.

## XIX.

MENU:—ON all sides of a village or small town, let a space be left for pasture, in breadth either four hundred cubits, or three casts of a large stick; and thrice that space round a city or considerable town.

“ FOUR hundred cubits ; *literally*, one hundred *dbanush* or poles :” four cubits make one *dbanush*. “ A large stick, or staff ;” three casts or throws of that. Near the village, on all sides, a space, exempted from the sowing of grain and the like, should be left for the pasture of cattle, in breadth either four hundred cubits, or three casts of a staff. Again ; near a city or considerable town, it should be made thrice as large.

CULLU'CABHATTA.

“ STICK ” (*Samyā*) ; the pin of the yoke. Thrice as much ground, as that, when thrown, passes before it falls, is the space to be left round a village.

The *Retnācāra*.

*Samyā* is explained by AMERA, the pin of the yoke.\* Here the diversity of opinions should not be imputed as a fault ; for it will be fully explained, that the space is not rigidly determined.

“ Round a city ;” round a considerable town resembling a city.

The *Chintāment*.

For a greater space will be directed to be left round a city.

\* AMERA is the pin of the yoke, and is the same as the pin of the yoke.

YA'JNYAWALCYA:—By the choice of the inhabitants, in proportion to the *whole* land, or by the authority of the king, should the *common* pasture for kine be *regulated*: but every where a twice-born man may take, as if it were his own, grafs for his cattle, fuel for sacrifice, and flowers for oblations.

2. LET a space be *left* between the village and the fields, in breadth four hundred cubits; let it be eight hundred cubits round a town, and sixteen hundred round a city.

“ By the choice of the inhabitants;” *literally*, of the village: in proportion to the *number* of persons inhabiting the village. Or according to the small or great quantity of land; or by the king's command; a space of ground should be left for the pasture of kine. Such is the sense of the *first* part of the text.

The *Retnâcara*.

SOME good portion of land should be appropriated to the pasturage of kine and the like.

The *Mitâcsharâ*.

THE second part of the text (XX) is thus explained in the *Mitâcsharâ*; a twice-born man, in want of grafs or fuel, may any where take grafs for kine, wood for the *sacrificial* fire, and flowers for oblations to deities, as if they were his own, without opposition: but *he can* only take fruits from an unenclosed spot; for it is *thus* recorded by GO'TAMA.

## XXI.

GO'TAMA:—HE may take, as his own, grafs and sacrificial fuel for his cattle and fire, and the blossoms of creepers and of lofty trees *for oblations*; and their fruit, if they be unenclosed.

THIS supposes preoccupancy; for, should a thing be unoccupied, property also vests by occupancy in others besides twice-born men, as is declared by the same authority.

GO'TAMA :—*A man becomes owner of wealth by purchase, partition, occupancy, hypothecation, and gain.*

As for what is again said in the following text.

## XXIII.

GO'TAMA :—*He indeed, who seizes grass without asking permission of the owner, or wood, or flowers, or fruits, shall suffer amputation of his hand.*

THIS supposes some other than a twice-born man ; or supposes no distress ; or implies a purpose different from that of *feeding* cows and so forth. Thus, if grass or the like, belonging to a stranger, be taken by a twice-born man, for his cows, his sacrifice, or his fire, there is no offence ; but there is, an obvious offence, if the grass or the like were produced by *the labour* of a stranger. .

OTHERS hold, that a *Bráhmāna* may, without the king's permission, take grass or the like from any piece of ground belonging to the king and not *already* occupied by another *subject* ; but any other, than a *Bráhmāna*, can *only* take grass and the rest from a piece of ground or spot occupied by himself with the king's permission. What is declared by GO'TAMA (XXII), is intended to establish property by the occupancy of a thing not already occupied by another ; or to determine the property in a case of theft.

THE other verse (XX 2) is propounded to provide for the well being of cows and other cattle, standing, lying, or moving.

The *Mitácsharā*.

OTHERS think, the second text (XX 2) is intended for an example of the space *to be left*, as directed by the preceding verse (XX 1).

BETWEEN the village and the fields, a space, measuring four hundred cubits,

cubits, should be *left* on all sides, exempt from tillage; round a small town (*carvatā*) the space should be eight hundred cubits in breadth; round a populous city, the interval should be measured by sixteen hundred cubits:

VIJNYĀNĒŚWARA.

A *dhanuṣṭh* is a pole of four cubits. A town (*carvatā*) is larger than a village, and less than a city.

VA'CHESPATI MISRA.

THE term is synonymous with large village or *mahāgrāma*.

THE following texts, cited in the *Retnācara*, define a village, town and city.

#### XXIV.

*Mārtandēya purāna*:—AN inhabited place, in the midst of fields and meadow land, where men of the servile class mostly dwell, and where agriculture thrives, is called *grāma* or village.

2. AN elevated spot, which has substantial buildings, and is surrounded on all sides by a ditch, if it be half, or a quarter, of a *yōjana* in length, and the eighth part of a *yōjana* in breadth, is a city or *puta*:

3. It is best, if there be deep water on the eastern side of it; if it be inhabited by persons of pure lineage alone; and if abject races be excluded. *Should the length be half of that described, the place is called a town or c'hē'ta: and one, less than that, is called a small town or carvatā.*

THAT inhabited place, where the servile class is numerous, and where many husbandmen reside, is named *grāma* or village, and it is situated in the midst of fields and grazed land. Thus, on all sides of the village, there should be pasture, and round this again should be the fields. The  
residence



residence of priests, soldiers, merchants and the like, is best in cities and towns : and that is intimated in a preceding chapter (Chapter II, v. IV.)

A PLACE, abounding in lofty edifices surrounded with walls ; itself encompassed by a ditch, and spreading over two *cṛśa*, or one *cṛśa* only, is called *pura* : and even that is a city (*nagara*), for, in the dictionary of AMERA, *pur* (the same with *pura*) is mentioned as synonymous with *puri* and *nagari* (or *nagara*).<sup>2</sup> It is best, if there be deep water on the east. Half of that *length*, or half a *cṛśa*, constitutes a town, or *c'hetā* ; and less than that, but greater than a village, is a small town or *caruāṭa*.

Is it not derogatory to YA'JNYAWALKYA, that he has not mentioned the space to be left round a town or *c'hetā* ? The objection is anticipated and answered in the *Retnācara*. It must be inferred, even though not mentioned, that the pasture ground for kine should be *regulated* in proportion to the abundance of cattle in the village or the like. Consequently, a space of four hundred cubits is only mentioned for the sake of illustration : the real meaning is, that pasture should be left for kine, in proportion to the *number of inhabitants*.

## XXV.

MENU :—WITHIN that *pasture ground*, if cattle do any damage to grain in a field unenclosed with a hedge, the king, shall not punish the herdsman.

“ WITHIN that ;” within the pasture ground of the village.

The *Chintāmeni*.

## XXVI.

VISHNU :—No offence is *imputable to the herdsman*, if the cattle graze, for a short time, in an unenclosed field, near the road, the village, or the pasture ground.

“ IF the cattle graze” is supplied to explain the purport of the text.

<sup>2</sup> Dictionary of AMERA, chapter on cities.

Should a field, which is situated near the road, the village, or the space left for pasture, and which is unfenced, be grazed by cows or the like for a short time, there is no offence on the part of the herdsman : but if they graze there long, blame is imputed to him ; for it is considered as arising from his fault.

The *Chintāmeñi*.

THE very same exposition is found in the *Retnācara*.

## XXVII.

NA'REDA :—THE herdsman is not answerable for damage done in a field adjoining to a village or a pasture ground, and which is unfenced.

“ PASTURE ground,” a space of grass land reserved for feeding cows and the like. a field adjoining to that.

The *Retnācara*.

## XXVIII.

YA'JNYAWALCYA :—No offence exists, if *damage be done unintentionally* in a field situated near the road, the village, or the pasture ground : but if the cattle be wilfully grazed there, the offender is liable to be punished as a thief.

CONSEQUENTLY the declaration, that “ there is no offence if the field be near the road or the pasture ground,” is restricted to the case of cattle accidentally grazing in it : and this also has been intimated by VISHNU in another form ; “ if the cattle graze for a short time &c.” (XXVI). Such is the opinion delivered in the *Chintāmeñi*.

By the term used in the texts of VISHNU, NA'REDA and YA'JNYAWALCYA, “ within the pasture ground &c.” it is declared, that no blame falls on the herdsman if the field be situated near the pasture ground. But there can be no grain in the pasture ground. However, when grain is sown within the space of four hundred cubits, the pasture ground is reduced by the consent of the inhabitants or otherwise : and in the text of MENU (XXV), “ within that,” or there, is the seventh or local case used in the

sense of proximity ; as in the line, “ CRĪSHNA sports in the woods (in, or) near the *Cālinḍī* (or *Yamunā*):” and even according to those, who hold, that the name of the river has, in that example, the secondary sense of its neighbourhood ; the word there, or within that, may in the present instance signify near that *pasture ground*. Thus others explain the text.

SHOULD a field, situated near the road or highway, or near the village or pasture ground, be grazed by cows, without design *on the part of the herdsman or his master*, no blame is imputable either to the cowherd, or to the owner of the cattle ; that there is no offence, is mentioned to exempt them from penalties and from paying the value of the grain damaged. But, if the cattle be wilfully grazed there, the offender suffers punishment, as a thief, for grazing cattle there by design : namely such a punishment, as is inflicted on a thief. The text of YĀJNYAWALKYA (XXVIII) is so explained in the *Mitākṣarā*.

### XXIX.

MENU:—SHOULD cattle, attended by a herdsman, do mischief near a high way, in an enclosed field, or near the village, he shall be fined a hundred *panas*; but against cattle, which have no keeper, let the owner of the field secure it.

NEAR a highway, or near the village, in a field of arable land enclosed with a hedge, should cattle, attended by a herdsman, *but not restrained by him*, enter the field by the gate or otherwise, and graze in it, he shall be fined a hundred *panas*: and, as the beast cannot be fined, the herdsman must pay the fine. But the person, who watches the field, must drive away beasts, which have no keeper, if they be found grazing there.

CULLO'CASHATTA.

### XXX.

NA'REDA:—If damage be done to grain by cows or the like breaking through a fence, the herdsman shall in that case be punished, if he did not restrain the cattle, though able to do so.

“ A FENCE;” an obstacle.

CHANDÉSVARA.

“ BREAKING;” this follows the regular sense of the crude verb *crīti*, cut. “ The herdsman shall be punished;” if he do not restrain the cattle, he shall be fined a hundred *pañās*: for the text coincides with that of MENU (XXIX). But, perceiving the breach in the fence, if he immediately restrain the cattle, no blame is imputable to him. “ Though able;” from this expression *it appears, that no blame is imputed to him, if he then happen to be unable to restrain a bull eager to approach a cow: and so in other cases.* Thus other lawyers declare *the rule*.

### XXXI.

US'ANAS:—NEITHER ancestors, nor deities, taste the offerings of that man, who demands compensation for corn destroyed by cows.

It is thus ordained, that the owner of the corn should not take the value of grain consumed by cows. But if, violating the prescribed system of duty, he do demand *compensation*, the judge must enforce payment; for there is no exception *relative to cows* in forensick law. The judge must *of course* enforce payment of the value of grain consumed by any other beast.

It is declared, that there is no offence if damage be done to grain in a field unenclosed with a hedge (XXV); and that there is offence, if corn, in a field enclosed with a hedge, be eaten *by cattle*: what sort of a hedge *should be made*? MENU himself describes it.

### XXXII.

MENU:—LET the owner of the field enclose it with a hedge of *thorny plants*, over which a camel could not look; and let him stop every gap, through which a dog or a boar could thrust his head.

ROUND a field of arable land, let him make a hedge of thorny plants, in  
such

such a mode, that a camel, standing on the other side, may not overlook it ; and let him stop every gap whatsoever, through which a dog or a boar could thrust his head.

CULLU'CABHATTA.

### XXXIII.

NA'REDA :—ROUND a field near the highway, a hedge should be made, over which a camel could not look ; which no beast could overleap ; and which neither a dog, nor a boar, could break through.

“ OVER which a camel could not look ;” that is, of such a height, that a camel, standing on one side of it, could not look over it to the other side.

HELÁYUDHA.

It follows, that the hedge should be high ; for, if a camel, passing by, see the corn enclosed by it, then, breaking the hedge and impelled by hunger, he cannot be restrained by his keeper. If a low hedge be made, there is no offence in the case of mischief done by a camel *in such a field*, any more than in *the case of a trespass on a field unenclosed by a hedge* : and so in respect of elephants, horses and the like.

OVER which hedge cattle cannot reach, and see the grain within it.

The *Párijáta*.

### XXXIV.

SANE'HA and LIC'HIRA :— To a field near the road a hedge should be made, over which a camel could not look ; and through which a dog or a boar could not open a passage.

“ A PASSAGE,” *here* is an interval : that is, an opportunity of entrance.

The *Riti Sástra*.

CONSEQUENTLY such a fence will be made, by means of which cattle may be prevented from forcibly destroying the corn. If that be not done, mischief is caused by the keeping of the several sorts of cattle. At what

season a fence should be made, CA'RYA'YANA declares, for the benefit of the husbandman.

## XXXV.

CA'RYA'YANA:—WHEN the grain is not yet produced, let him make a strong fence; for beasts, eager after once tasting what they relish, are with difficulty hindered.

“ BEASTS” here signify cattle.

The *Retnácara*.

“ STRONG ;” *literally* great : by this is suggested a hedge over which a camel cannot look, and through which a dog or a boar cannot open a passage.

“ AFTER once tasting what they relish.” the meaning is, when they taste things, which are desired by them.

## XXXVI.

MENU:—IN other fields, the *keeper of cattle doing mischief* shall be fined one *pana* and a quarter; but, in all places, the value of the *damaged* grain must be paid: such is the fixed rule concerning a husbandman.

IN other fields, not adjoining to the road side and the like, should mischief be done by cattle, the keeper shall be amerced. It should be here noticed, that the fine is one *pana* and a quarter for every head of cattle. So the *Retnácara*: and CULLU'CABHATTA gives the very same interpretation.

IN other fields, situated at a distance from the highway and the like, distinct fines are ordained for distinct kinds of cattle: so the *Cbintáméni*. Those fines will be subsequently mentioned.

“ IN all places” (XXXVI); the grain consumed by cattle in any field, must be made good to the owner of it, by the herdsman or by the owner of the cattle, according as the offence is imputable to one or the other. Such should be the decision.

CULLU'CABHATTA.

THUS property in the field is attributed to the husbandman by this very gloss of CULLU'CABHATTA. It appears from the phrase, "in all places" (XXXVI), that the grain eaten *by cattle*, off a field enclosed with a hedge as abovementioned, must also be made good to the husbandman.

## XXXVII.

SANC'HA and LIC'HITA :—A cow, grazing during the night, *brings on its owner, or keeper, a fine of five máshas*; during the day, three *máshas*; and for one hour (*muhúrta*),\* one *másha* : but no fine is imposed if she graze in the village.

"GRAZING;" eating until satiated. Hence, if she graze *by day* until she be satisfied, *the fine is three máshas*. But if she graze for one hour only, a fine of one *másha* should be levied. However, no fine shall be imposed for her grazing within the village; that is, in a field within the limits of the village and the like. A *másha* here signifies the twentieth part of a *cárfhápana*, as declared by NA'REDA.

## XXXVIII.

NA'REDA :—BUT a *másha* may be considered as the twentieth part of a *cárfhápana*.

AND that is meant of silver. Accordingly the author of the *Bláshya* says :

IN matters of fine it is proper to count by *máshas* of gold : but, for grain eaten by cattle, *the fines are regulated by other máshas; namely, those of silver*.

A *cárfhápana* is also a *measure* of silver as well as of copper; and here a *másha* of silver contains two *raścis* or seeds of the *gunjá*, each equal to three barley coins: as is declared by MENU (Chapter 8, v. 134 and 135). The text of SANC'HA and LIC'HITA is thus expounded in the *Retnácará*, and also in the *Vedá Chetávará*.

\* *Muhúrta* is the twentieth part of a *day* and night.

SINCE the author of the *Bhāṣya* directs the *māśa* of silver in the case of grain eaten by cattle, *because he is scrupulous of the great inequality in comparison with the fine of one paṇa and a quarter*, whether the *māśa* containing sixteen *raśticās* be taken, as declared by VRĪHASPATI ( “ but the twentieth part of a *pala* is called a *māśa* : ” ) or the *māśa* containing five *raśticās*, as mentioned by MENU ( “ five *crīṣṇaśas*, or *raśticās* of gold, are one *māśa* ” ) ; *therefore* the rule is thus settled by authors, who think that the *māśa* of silver, containing two *raśticās*, as mentioned by MENU, should not be abandoned : if the beast eat grain during the night until it be satisfied, a fine of ten *raśticās* of silver *shall be paid* to the king ; if it eat so long during the day, *six raśticās* of silver ; if it do not eat until it be satisfied, but graze for some short time, whether by night or day, two *raśticās* of silver : and the value of the grain consumed in the field must be made good to the husbandman. This proceeds on the supposition of one *paṇa* and a quarter being equal to two *raśticās* of silver : if they be unequal, a distinction must be assumed from the *sort*, or *from the quantity*, of grain destroyed. But others explain a *paṇa* and a quarter in the text of MENU (XXXVI), as signifying a *paṇa and a quarter* of copper.

As for the opinion, that a fine of one *māśa* for a cow grazing during one *mubūrta* is directed, to obviate the doubt, “ what fine should be imposed in the case of a cow grazing during twilight ; because distinct rules are delivered for the respective cases of a cow grazing during the day and during the night ; ” and accordingly the law declares, that “ twilight, called *mubūrta*, is considered as uniform, whether *the day* increase or wane ; ” and here the word *mubūrta* denotes a particular hour *of the day* ; that opinion is wrong : for common sense opposes the same regulation, when a cow has grazed in a stranger's field during the night, whether she grazed *there* for some trifling space of time, or until she were satisfied : and there is no real difficulty, since twilight, exclusive of day and night, is not admitted in philosophy.

“ BUT no fine, in the village ” (XXXVII) ; since this has obviously the same import with the text of MENU (XXV), no fine is imposed for a cow grazing near the village, or near the high way ; *it is not meant, that no fine*



SINCE *the word* horse is here exhibited in the masculine gender, the same amercement should be paid for male buffalos and the rest which is directed for females ; and the same for a mare and for a horse. But cows and female buffalos are instanced, considering the excellence of the female which affords milk for consumption.

“ AND two each, for a goat and a sheep ;” the meaning is two and a half. To exhibit the coincidence of this text of GO'TAMA (XL) with that of CA'TYA'YANA above cited (XXXIX), some explain “ a quarter,” the fourth part of the fine just mentioned for a buffalo grazing in a stranger's field ; that is a fourth part of two quarters of a *pañā* : for it has the same import with the text to be quoted from YA'JNYAWALKYA (XLII). Others say, it supposes particular mischief, happening without design. This rule of GO'TAMA concerns cattle grazing during the night.

#### XLII.

SANC'HA and LIC'HITA :—FOR the young of every sort of cattle, a *māśha* ; for a female buffalo, ten ; for an afs and a camel, sixteen ; for a goat and a sheep, four.

THIS text concurs with *those of* GO'TAMA and CA'TYA'YANA, in directing a fine of ten *māśhas* for a female buffalo. “ Sixteen, for an afs and a camel,” contradicts GO'TAMA. “ Four, for a goat and a sheep,” contradicts both GO'TAMA and CA'TYA'YANA : and “ a *māśha* for calves, or the young of cattle,” contradicts CA'TYA'YANA.

ON this point some hold, that the connexion of terms is remote in the phrase, “ six for a camel ; ten for a horse or a female buffalo ” (XL) : in this manner ; for a horse or a female buffalo, ten ; for a camel, ten and six, or sixteen ; and so forth : and the meaning of “ four for a goat and a sheep,” is, two for a goat, and two for a sheep. “ A *māśha* for young cattle,” is here meant of a *māśha* consisting of five *crīṣṇaḥ*. It should not be objected, that the *māśha* of five *crīṣṇaḥ* is inadmissible, because MENU has defined the *māśha* of silver, as consisting of two *crīṣṇaḥ* only. Since MENU has also defined the term *cārjāpāna* as relating to copper only,

is imposed for her grazing on land appropriated to dwelling places. "Village" is here used in the locative case with the sense of proximity, as in the example quoted; "CRĪSHNA sports in the forest (in, *that is*) near the Yamunā." Consequently, there is no difficulty: and it should be so understood.

THE following text elucidates what is observed in the *Gbintāmeni*, that distinct fines are ordained for distinct kinds of cattle.

## XXXIX.

CATYA'YANA:—For mischief done by a cow let the king compel the owner to pay a quarter of a *pañā*; for a female buffalo, two quarters: but for goats, sheep and calves, the fine ordained is a quarter of that, which has been last mentioned.

HERE a quarter of a *pañā* should be considered as the fine ordained if the grain were eaten during the night. A quarter of a *pañā* is the fourth part of a *cārśhāpana*.

The *Retnācara*.

*Pañā* here signifies *cārśhāpana*.

The *Gbintāmeni*.

THIS obviously means a *cārśhāpana* of silver, consisting of forty *crīṣṇaḥ* or seeds of the *gunjā*: for the text of NĀ'REDA declares, that a *māśha* is the twentieth part of a *cārśhāpana* (XXXVIII); and the text of MENU expresses, that "two *crīṣṇaḥ* or *raśhicāś* of silver are considered as one *māśha*." A quarter of a *pañā* (or ten *crīṣṇaḥ* of silver) is the same with five *māśhas* of silver: and this coincides with the text of SANC'HA and LIC'HITA (XXXVII).

## XL.

GO'TAMA:—FIVE *māśhas*, for a cow; six, for a camel; ten, for a horse or a female buffalo; and two each, for a goat and a sheep.

SINCE *the word* horse is here exhibited in the masculine gender, the same amercement should be paid for male buffalos and the rest which is directed for females ; and the same for a mare and for a horse. But cows and female buffalos are instanced, considering the excellence of the female which affords milk for consumption.

“ AND two each, for a goat and a sheep ;” the meaning is two and a half. To exhibit the coincidence of this text of GO'TAMA (XL) with that of CA'TYA'YANA above cited (XXXIX), some explain “ a quarter,” the fourth part of the fine just mentioned for a buffalo grazing in a stranger's field ; that is a fourth part of two quarters of a *ponia* : for it has the same import with the text to be quoted from YA'JNYAWALKYA (XLII). Others say, it supposes particular mischief, happening without design. This rule of GO'TAMA concerns cattle grazing during the night.

#### XLI.

SANC'HA and LIC'HITA :—FOR the young of every sort of cattle, a *māśha* ; for a female buffalo, ten ; for an ass and a camel, sixteen ; for a goat and a sheep, four.

THIS text concurs with *those of* GO'TAMA and CA'TYA'YANA, in directing a fine of ten *māśhas* for a female buffalo. “ Sixteen, for an ass and a camel,” contradicts GO'TAMA. “ Four, for a goat and a sheep,” contradicts both GO'TAMA and CA'TYA'YANA : and “ a *māśha* for calves, or the young of cattle,” contradicts CA'TYA'YANA.

ON this point some hold, that the connexion of terms is remote in the phrase, “ six for a camel ; ten for a horse or a female buffalo ” (XL) : in this manner ; for a horse or a female buffalo, ten ; for a camel, ten and six, or sixteen ; and so forth : and the meaning of “ four for a goat and a sheep,” is, two for a goat, and two for a sheep. “ A *māśha* for young cattle,” is here meant of a *māśha* consisting of five *crīṣṇaḥ*. It should not be objected, that the *māśha* of five *crīṣṇaḥ* is inadmissible, because MENU has defined the *māśha* of silver, as consisting of two *crīṣṇaḥ* only. Since MENU has also defined the term *cārśāpāna* as relating to copper only,

there could not be also a *cārśhāpana* of silver ; it may therefore be said, that the several terms likewise signify those several weights of iron or other *metals*. Or “ a *māsha* for young cattle ” may suppose very young cattle ; and the text of CA'TYA'YANA (XXXIX) may suppose older calves. The young of all sorts of cattle, or any beasts in the first period of life, are intended.

## XLII.

YA'JNYAWALCYA:—*The owner of a female buffalo, doing damage to grain, shall be fined eight māshas; of a cow, half that amercement; and of a goat or sheep, half again of this amercement :*

2. For cattle eating and lying down in the field, the fine is double the amercement mentioned. It is also the same if they trespass on preserved pastures ; and the fine for an ass or a camel is the same with that for a female buffalo.

A FEMALE buffalo, doing mischief in a stranger's field, shall be fined eight *māshas* ; a cow, half that, or four *māshas*, goats and sheep shall be fined two *māshas*. As buffalos and the rest have no interest in wealth, the person, who owns them, is intended. A *masha* here signifies the twentieth part of a *pañā* of copper ; for NA'REDA records, that a *māsha* is considered as the twentieth part of a *pañā* : and the text concerns a *trespass* without design.

The *Mitācsharā*.

SOME remark it, as the sense of the *Mitācsharā*, that the fine is regulated by a *māsha* consisting of four *raśicās* of copper. But that is erroneous ; for the author of the *Blāshya* declares *fin s to be regulated by the masha of silver*, in the case of cattle grazing on a *stranger's ground* : and thus, according to the *Mitācsharā*, the fine is determined by a *māsha*, or quantity of silver, weighing five *raśicās* : and that contradicts the opinion already quoted from the *Ratrachara* and other works. Apprehending its inconsistency with the texts, which ordain a fine of five *asthas* (VI.), the author of the *Mitācsharā* adds ; the text concerns a trespass without design. meaning damage done to grain without

without design on the part of the keeper. But if the damage happen with his previous knowledge, the fine is that *which is* directed by CA'TYA'YANA and the rest. Such is his opinion.

OTHERS apply the two texts, which ordain fines of eight and ten *māśhas*, according to the particular damage done, or particular age of the beast.

### XLIII.

NA'REDA : — LET the king compel *the owner of* a cow, *which has done mischief*, to pay a fine of one *māśha*; and of a female buffalo, two *māśhas* : and let the fine for goats, sheep, or young cattle, be half a *māśha*.

THIS supposes corn consumed, but so that the root remains fit for replanting. Such is the interpretation proposed in the *Mitācsharā*.

“ FOR cattle eating and laying down” (XLII 2); if cattle, after eating grain in a stranger's field, sleep there undisturbed, the fine shall be double; if, accompanied with their young, they graze and lie down, it shall be quadruple the fine that has been mentioned : for a text ordains,

### XLIV.

TWICE as much is directed for cattle abiding there; and four times as much, for cattle accompanied by their young.

THIS is also *stated* in the *Mitācsharā*.

“ IT is the same &c.” (XLII 2); even for mischief done in a preserved pasture, the fine is similar to that *which is ordained* in the case of mischief done by cattle in a field.

The *Retnācara*.

“ A PRESERVED pasture,” a preserved space of ground, abounding in grass and wood. If mischief be there done, the fine is equal to that for trespasses on other fields. “ If they trespass;” if buffaloes and the rest do mischief.

The *Mitācsharā*.

THE

THE *Retnácara* should also be quoted on this point. The fine for an afs or a camel is the same with that paid for a female buffalo; in whatever fine *the owner of a female buffalo is amerced in each case, in such a fine shall the owner of an afs or a camel be amerced in the same case.* Such is the opinion expressed in the *Mitácshard*.

#### XLV.

VISHNU:—If a female buffalo do injury to grain, her keeper shall be fined eight *máshas*; or if a horse, a camel, or an afs do so, *the amercement is the same*; if a cow trespass, half *that fine*; if a goat or sheep do mischief, half that again: if the cattle lie down after grazing, *the amercement is doubled.*

“ A HORSE, a camel, or an afs; ” ‘ if they do injury to grain,’ is brought forward from the preceding sentence. The *Retnácara*.

CONSEQUENTLY it has the same import with the text of YA’JNYAWALKYA (XLII); but VISHNU (XLV) disagrees with GO’TAMA (XL) and with SANC’HA and LIC’HITA (XLI). On this point some lawyers observe, that, in particular countries, an afs and a camel being *beld* equal to a female buffalo, the text of VISHNU is there *applicable*; in some places, an afs and a camel consuming more than a female buffalo, the text of SANC’HA and LIC’HITA there *regulates the fine*.

#### XLVI.

NA’REDA: — LET *the owner or the keeper of cows* be fined a quarter of a *cárshápana*; and *the proprietor or the herdsman of female buffalos*, twice as much; another fine of a *másha* is ordained for a goat or a sheep *trespassing with its young*.

2. FOR cattle eating grain until they be satisfied, the fine is double; but, for cattle abiding, it is quadruple: and the punishment of theft is ordained by the wife, for those who graze cattle on a *stranger’s ground in their own sight*.

“ A

“ A QUARTER ;” the fourth part of a *cārṣhāpana*, or ten *raśticās* of silver.  
 “ Twice as much ;” twenty *raśticās* of silver. “ Another fine of a *māśka* ;”  
 since the fine for goats and sheep is, in every instance, declared half that for  
 a cow, it signifies a *māśka* containing five *crīṣṇālas*.

CHANDÉSWARA explains the *term used in the text*, satisfied with grain  
 eaten ; and “ abiding,” passing the night there after grazing. This supposes  
 cattle pastured unperceived ; but for them, who graze cattle openly *on a*  
*stranger's ground*, the punishment of a thief is ordained. “ Who graze cat-  
 tle in their sight” (XLVI 2) ; who pasture them by force, even in the pre-  
 sence of the husbandman.

IN the *Chintāmenī* a similar exposition is delivered : it is there said, that  
 the sense of the first *beniśīch* (XLVI 2) is *this* ; if they pass such a length  
 of time, that they lie down after eating grain, and afterward, hunger return-  
 ing, graze *there* again.

WE cannot discover, why it is said ; “ even in the presence of the hus-  
 bandman ;” for every difficulty is removed by saying ; “ in the *sight* or  
 presence of the herdsman, who suffers the cattle to consume the grain.”

#### XLVII.

NA'REDA.—BUT if a cow, straying by the fault of the herd-  
 sman, damage a field, no penalty is, in that case, exacted  
 from the owner : the herdsman suffers the punishment of  
 that *offence*.

2. BUT he (*the owner*) should restrain the cows from *fields* of  
 grain : if they graze there *with his knowledge*, the blame  
 falls on both master and herdsman ; the master shall be  
 compelled to pay the value of the grain and a fine, and  
 the herdsman shall be scourged.

IN a *preceding text* (XLVI 1) a rule is propounded for an amercement of a  
 quarter of a *cārṣhāpana* and so forth, *to be levied* on cows and other cattle.

That cannot be strictly applicable, because cows and the rest have no property; therefore *the sage* himself announces the induction (XLVII). "Straying;" going out of sight. If cows, intrusted to a herdsman, destroy grain out of his master's sight, by the fault of that herdsman, the penalty falls on him alone: in a similar case, if their owner see them eating the grain, he should drive them off; but if he restrain them not, he must pay the amercement and make good the value of the grain consumed: for such is the sense attributed to *the word* penalty, since the master is concerned. To chastise the herdsman, a scourging is directed. That also is a penalty. This should be understood: and CHANDE'SWARA virtually gives the same interpretation.

#### XLVIII.

YA'JNYAWALKYA:—As much grain as shall be destroyed, so much produce shall be *paid* to the husbandmen; the herdsman shall be scourged; but the owner of the cattle incurs the fine already declared.

GRAIN is mentioned to denote generally the produce of fields. As much straw, grain, or the like, as is destroyed by cows or other cattle, so much produce shall the owner of them be compelled to pay to the owner of the field; according to the valuation determined by arbitrators, in this form, "from so much land the produce is so much." But the herdsman shall only be beaten; he shall not be compelled to pay for the produce: the scourging of the herdsman, accompanied by the pecuniary fine abovementioned, must be applied to the case of damage done to grain by his fault (XLVII 1). Again; the owner of the cattle incurs the fine already declared, if grain be injured by his own fault: *he is not liable to* a scourging. But in every case, the produce must be made good by the owner of the cattle alone; for he participates in the produce of the field, by means of milk obtained from female buffalos and the like fed on grass, the produce of that field. The produce, remaining above the *quantity* consumed by the cows and the like, should be taken by the owner of the cattle; for he has absolutely bought it by payment of the price adjudged by arbitrators. VIJNYA'NE'SWARA.

CONSEQUENTLY, in those cases also where the herdsman shall be amerced,  
the



the value of the grain consumed shall be paid by the owner of the cattle to the proprietor of the field. Such is his meaning. But that is not the opinion of CHANDÉ'SWARA; for, in a gloss on the following text of NA'REDA (XLIX), he says, "if the corn be destroyed together with its root, both *the master and herdsman* being in fault, the master must pay grain to the amount of the damage, and a fine."

## XLIX.

NA'REDA: — BUT if the corn be destroyed together with its root, let the owner of the land receive the quantity of grain, which would have been produced from that field; let the herdsman be dismissed with blows; and let the amercement fall on his master.

IN the first part of the text of YA'JNYAWALKYA (XLVIII) it is directed, that the grain shall be received by the husbandman; but the person, from whom it shall be received, is not mentioned. Therefore, since the king must receive the amercement, it may thence be argued from suggestions of common sense, that, in the case where the herdsman suffers the punishment or incurs the penalty (XLVII 1), both the husbandman and the king receive a penalty.

IN the preceding texts fines are declared against female buffalos and other cattle; and that is incongruous, since they have no wealth; hence it is said, the herdsman shall be scourged (XLVIII). But (*it is added*) the owner of the cattle incurs the fine; this, however, supposes the case of a fault on the part of the owner of cattle. CHANDÉ'SWARA's opinion must be so understood. Consequently, it should be held, on his construction of the law, that a penalty must also be paid to the owner of the field, by the same person, and in the same case, in which a fine is paid by that person to the king.

"WITH blows" (XLIX); with hurt proportioned to the offence. Corn is considered as destroyed together with its root, when the mischief is such, that it cannot be replanted.

CHANDÉ'SWARA.

Is not this text superfluous ; since the same sense is deduced from a former one, “ the master shall be compelled to pay the value of the grain and a fine ” (XLVII 2) ? This text is a reply to the question, to whom shall the value of the grain be paid : and thus, if the corn can be replanted, and the crop be so obtained in consequence of a pecuniary payment *for the charge of replanting the corn*, an equivalent shall not be again paid for the plants eaten.

## L.

VISHNU:—AND in every case, *the offender shall be compelled to pay the value of the grain destroyed.*

“ SHALL be compelled to pay ” must be supplied in the text. “ In every case,” whether the cattle be attended or unattended. The *copulative* “ and ” connects the subject with the fine *payable* to the king.

The *Retnâcara*.

## LI.

NÂREDA:—BUT to that man, who demands *compensation* for grain consumed by cows, *the value of it* must be paid, as determined by arbitrators : wherever destroyed,

2. Grass must be made good to its owner, and grain to the husbandman. A fine, indeed, is also ordained, if corn be trodden down by cows.

“ THE grain consumed ; ” in proportion to the grain consumed, *must payment be made.* “ Grass,” common herbage : and this payment for herbage occurs in the case of a reserved pasture.

The *Retnâcara*.

“ GRASS,” blades of corn. “ The owner ; ” the proprietor of the cattle. The blades of corn or the grain must be made good by him to the husbandman. Such is the sense of *the texts*.

The *compensation* may be taken *compulsorily* with municipal, but not with rural.

law, for it is a cause of *sinking to* a region of torment. It should not be taken by a *righteous man*, for *that is discouraged by* the text of UŚ'ANAS above cited (XXXI).

The *Chintāmeni*.

THE meaning of *that gloss of the Chintāmeni* is, that NA'REDA intimates a right of taking *compensation*, by this expression, "that man, who demands it." "As determined by arbitrators:" adjudged by arbitrators in this form; "so much grain *would have been produced* in this field."

THE *apparent* contrariety of *texts*, propounding inconsistent fines for the very same offence, must be reconciled by regulating *the fine* according to *the trespass committed* by day or night, with or without design.

The *Retnācara*.

THUS the *apparent* inconsistency of the *texts* of GÓTAMA, YÁJNYA-WALCYA and the rest, should be reconciled, as proposed in the *Mitśhārā* and other works. Such also is the opinion *intimated* in the *Retnācara*.

## SECTION III.

## ON TRESPASSES NOT FINABLE.

ON the subject of herdsmen,

## LII.

NA'REDA ordains.—If he be seized by the king or by a crocodile, struck by thunder and lightning, bitten by a serpent, *hurt by a fall from a tree*,

2. Smitten by a tiger or the like, or attacked by disease, there is no offence on the part of the herdsman, nor is any blame *imputable* to the owner of the cattle.

If the herdsman be seized by the king for the purpose of *employing him in* the performance of work, or if he be seized by an alligator, under such circumstances, should grain be eaten by the cattle committed to his charge, no blame is imputable to him. If he be struck “by thunder and lightning,” a distinction must be supposed between these, from some difference in the mode *in which he is struck*. Sometimes a man survives, though struck by thunder and lightning therefore no blame is imputable to a herdsman affected by such an accident. “Nor to the owner of the cattle.” If the herdsman die in consequence of such an accident, no blame is imputable to the owner of the cattle, provided he was ignorant *of the trespass*.

## LIII

YA'JNYAWALCYA —A BULL, consecrated cattle, a cow, which has lately calved, a stray, and other beasts, which are not attended by a keeper, should be set free, *for they are impelled by God and the king.*

“ A BULL” kept for impregnation. “ Consecrated cattle,” dismissed in honour of the deity, according to the form for consecrating bulls. “ A cow, which has lately calved;” within ten days after her calving. “ A stray;” wandering from its own herd, and coming from another country. These “ should be set free;” even though they consume a stranger’s grain, no fine shall be levied. Cattle also, “ which are not attended by a keeper, are impelled by God and the king;” they are urged by God and the king; therefore, if they destroy grain, no fine shall be levied. Under the term “ other beasts,” elephants, horses and the like are comprehended; and they are mentioned by UśĀNAS.

The *Mitācsharā*.

In the *Retnācara* also, the same *exposition* is given. Since a fine cannot be imposed for consecrated cattle, which have no human owner, the mention of them *must be intended* for the purpose of illustration. As consecrated cattle occasion no amercement, so bulls and the rest *occasion none*. This also is noticed in the *Mitācsharā*.

A BULL cannot be restrained. Consecrated cattle are beasts dismissed in honour of the deity. As land dedicated to the deity, and the vessels appropriated to worship, are held and kept by the *instituted* worshipper of the deity; so, if some person feed, with grass or the like, cattle consecrated by any man, it might be questioned whether he should be liable to a fine; and since it might be questioned, in the case of a bull dismissed, whether the dismitter be liable to a fine, because he is the remote cause of the trespass; *therefore* it is declared, *that no fine shall be imposed*. Or it is so declared, on the doubt whether the keeper might be fined for mischief done by consecrated cattle attended by a keeper. It might be questioned whether a fine should be levied for the trespass of a stray, when the owner is ascertained by long watching the beast: and it is declared, that no fine shall be exacted for the transgression of those *herdsmen*, who abscond through fear of God or the king; nor from owners of unattended cattle, provided the cattle be fortuitously unguarded; nor for cattle terrified by the fall of thunder or the like. Thus others expound the law.

“ STRAYS,” coming from another village, or wandering from the herd.

and which are not attended by a keeper. Such is the sense of *the text*. The meaning is, that there is no offence, if cattle, running away on seeing an army, or on hearing *some frightful noise* or the like, graze in a stranger's field.

The *Cbintāmeni*.

BUT the sense is thus *stated* in the *Retnācāra*: cattle which have strayed in consequence of rain or the like, through the act of GOD, or through *some act* of the king's officers, without any fault on the part of the herdsman, should be set free.

BUT "or" is supplied in the *Pāriyāta*; "*or those*, which are not attended by a keeper." In fact, it should be assumed both ways; for they are *both* equally pertinent.

#### LIV.

MENU:—FOR damage done by a cow before ten days have passed since her calving, by bulls *kept for impregnation*, and by cattle consecrated to the deity, whether attended or unattended, MENU has ordained no fine.

A cow within ten days after her calving, bulls dismissed with marks of the trident and discus\*, cattle dedicated to the deity, whether attended or unattended, MENU has declared not finable, when found grazing in corn. Since even consecrated bulls are kept by herdsmen among cows, for the sake of impregnating them, it is possible, that they may be attended by a keeper.

CUḤU'CABHAT'Ī'A.

"BULLS" kept for impregnation.

The *Cbintāmeni*.

\* The figure of a trident is stamped with a hot iron on the right shoulder, and a circle or discus on the left knee of the deer which is adorned with four bells at different intervals of months; the four marks are made with golden words, a head of lotus to be joined with a hot iron, on a deer discus and a trident or arrow marked of copper. The trident has the consecration of the bull to be used in a sacrifice, while the discus, which is the weapon of Vishnu's, for it does not pierce, that the bull is consecrated to the use of the deity.

" BEFORE ten days have passed since her calving," the meaning is, if ten days have not elapsed since her calving

## LV.

NA'REDA: — A cow, within ten days, after her calving, a bull, horses, and elephants, should be diligently kept off; their owner is not blamable for their trespasses.

" HORSES and elephants," appropriated to the protection of the subject.  
The *Retnacata*.

## LVI.

US'ANAS:—FOR elephants and horses no fine is allowed, since they are considered as defences of the subject, nor for cattle blind of one eye or lame, nor for bulls marked with the token of consecration.

2. Nor for a stray, nor for a cow which lately calved, nor for one, which desires the male; nor for cows, during jubilees, nor at the season of obsequies.

" LAME," crippled. By the terms, "blind of one eye or lame," is here denoted cattle very much disabled "Bulls marked," distinguished by the mark of a trident and the like. "Perverse" (for CHANDE'S'WARA reads *abhichārinī*, instead of *abhisārinī concupiscent*, one, which bears excessive beating without obeying its driver.

The *Retrācata*.

IN the *Pārijata* it is read, *abhisārinī*, and explained, "one, which desires the bull." "Horses" belonging to the king, for they are a defence to the subject. As for what is declared by GO'TAMA, "ten for a horse or a female buffalo" (AL), that concerns horses belonging to traders and the like. consequently there is no inconsistency.

IN the *Chartamuni* the reading is, *abhisārinī*. it signifies one, which is

much disposed to run away *from its keeper*. The words, "blind of one eye or lame," are *there* expounded as in the *Retnâcara*.

"Nor for cows;" consequently, should some inconsiderable mischief be done by cattle belonging to owners wholly occupied in the celebration of a festival or the like, no fine *shall be exacted*. Thus other *lawyers explain the text*.

#### LVII.

SANC'HA and LIC'HITA:—SMALL cattle, and animals of general use, may not be driven away; *the owners* of mules, elephants, and horses are exempt from fines; such beasts are ungovernable, and should be gently driven away.

"A MULE," born of a mare by an ass. "Ungovernable;" beasts, which cannot be readily driven away.

The *Retnâcara*.

"SMALL cattle;" calves, *or young cattle*, may not be driven away. "Animals of general use," such as cats and the like, occasion no amercement, even though they do mischief: those *animals*, which are of general use, or which suit the purposes of all, should be maintained by all. "Mules, elephants, and horses," appropriated to the protection of the subject. Thus others *expound the law*.

BUT in the *Chintâment* the reading is, "small cattle, and ungovernable mules, elephants and horses." "Ungovernable" is explained, unmanageable.

THE reading of the *Pracâsa* and *Pârijâta* is *abaddha* (explained "not to be smitten"), instead of *asaddha*, ungovernable.

#### LVIII.

CATYA'YANA:—If cattle of the lowest, highest, or middle sorts be beaten, should their owner sue *the offender*, let the king adjudge a fine.

2. BUT



2. BUT VRĪHASPATI permits the seizure and chastisement of beasts, which trespass in fields, flower gardens, preserved pastures, houses, or stalls for cattle.

“ STALLS or *paddocks* ;” places abounding in grafs. “ Seizure ;” binding or tying.

CHANDĒŚWARA.

THERE is no offence in beating or tying cattle which trespass in a house or the like.

VĀCHĒSPATI-MISRA.

BUT the reading, approved by him, is, *paśu rājīṣhu*, among strings of cattle, instead of *paśu vātīṣhu*, in stalls for cattle ; and preserved pastures signify places abounding in grafs.

IN the first text (LVIII 1), “ *against the striker* ” must be supplied after the words, “ *adjudge a fine :* ” and the *second* text is recited by MISRA with these words premised, “ *the sage declares an exception to that rule.* ” Thus, if he strike cattle without a fault, the striker shall be amerced ; but not, if the cattle trespass in a field or the like. Such is his opinion.

BUT others hold, that striking without provocation should be considered under the title of assault and violence ; under the present head, it is permitted to strike cattle if they transgress : in that case, their owners, prosecuting the striker, shall be amerced. The sage propounds the transgressions in the second verse (LVIII 2).

IN the *Retnācara*, “ flower gardens and reserved pastures,” are explained, lands cultivated by a man himself for gardens or the like. Or “ flower gardens ” may signify gardens in general ; and “ reserved ” spots, fields of potherbs or the like adjoining to the habitation.

#### LIX.

MENU :—THESE rules let a just prince observe in all cases of transgression by masters, their cattle, and their herdsmen.

LET a king, excelling in justice, observe these rules above declared, in cases of transgression by masters and herdsmen not guarding *their cattle*, and in cases of damage done to grain by cattle.

*THE END OF BOOK III.*

# BOOK IV.

## ON THE DUTIES OF MAN AND WIFE.

### CHAPTER I.

#### ON THE DUTIES OF A HUSBAND.

#### SECTION I.

##### ON THE NECESSITY OF GUARDING WOMEN.

IS it not impossible, that there should be such a title of judicial procedure, as the duties of man and wife, since litigation is forbidden, in a controversy between man and wife, by a text of civil law quoted in the *Mitācsharā'* (Book III, Chapter I, v. X)? Of this question CHANDE'SWARA gives a solution: 'although a suit in the king's court, conducted by the wife and husband as plaintiff and defendant, be forbidden, yet the king may be privately informed by either of them; and if they deviate from that conduct, which is enjoined to them in regard to each other, they must be confined to their own sole duty, by means of punishment and the like denounced by the king; else (if they persist in misconduct,) they shall be chastised: to intimate the duties of man and wife are propounded under a title of *forbearance*.' tice.

BUT the author of the *Mitācsharā'*, argues from the law,

*husband to appropriate the wealth of his wife in certain cases* (Book I, v. CCXCI), that, should he dissipate the wealth of his wife in other circumstances than *the pressure of famine* and the like, and refuse to repay it on demand, though he actually possess wealth, a suit between a married couple is in that case, admissible. But the litigation of teachers, husbands, and the rest is not laudable either in a moral or a civil view, therefore pupils, wives and the rest should, in the first instance, be discouraged by the king or the court. Such is the implied sense of the verse (Book III, Chapter I, v. X), but, in very important cases, even the suits of pupils and the rest may be entertained in the form mentioned.

BUT others hold, that this verse (Book III, Chapter I, v. X) only prevents the recourse of husbands and the rest, to the king's court, for it is declared (Book III, Chapter I, v. XI), that wives and the rest, committing faults, may be corrected by their husbands and so forth. But, if husbands and the rest transgress, there is no redress, without application to the king. In this text (Book III, Chapter I, v. X) the meaning is, "mutual litigation," and thus the independence of wives is incidentally forbidden, to establish that law concerning man and wife, and to denounce punishment for a woman asserting independence.

## I

VRĪHASPATI:—THIS law concerning adultery has been declared; next hear the whole rule of conduct for man and wife, as propounded by me.

"ADULTERY," corrupting the wife of another. "The whole rule &c." hear the collection of *rules* for the mode of conduct and behaviour of man and wife towards each other.

## II.

MENU:—I NOW will propound the immemorial duties of man and woman, who must both remain firm in the legal path, whether united or separated.

I WILL declare the prescriptive duties of man and woman, persevering, whether united or separated, in the path of duty enjoined *by the law*, namely, the mutual fidelity of man and wife. If the mutual duty of husband and wife be violated by one forsaking the other, the transgressor shall be confined to his duty even by penalties imposed by the king: therefore it is mentioned among *subjects of judicial procedure*. CULLU'CABHATTA.

"IMMEMORIAL," the term is explained in the *Retnacara*, indispensable. "United" by dwelling in the same house or the like, "separated" by residing abroad and so forth. But YA'JNYAWALKYA does not mention the duties of man and wife among forensick matters.

MENU declares the duties of man and woman.

### III.

MENU:—DAY and night must women be held by their protectors in a state of dependence; *even in lawful and innocent recreations*, being too much addicted to them, they must be kept *by their protectors* under their own dominion.

WOMEN must be ever held in subjection by their husbands or protectors; even in respect of unforbidden recreations, such as matters of beauty and taste, (being *too much* addicted to them,) they must be reduced under their *protectors own dominion*. CULLU'CABHATTA.

CONSEQUENTLY they should not even view paintings, eat mixed food, or wear jewels or the like, without the permission of their husbands or other protectors\*. If they were in a state of independence, what harm would ensue? NA'REDA declares *the consequence*.

### IV

NA'REDA:—THROUGH independence, even women born of

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\* THE inference, drawn by the compiler, obliges me to alter the version of this text. The passage itself, and the gloss of CULLU'CABHATTA, would bear the construction, which Sir W. JONES had put on it. (Chapter 9 v. 2)

noble families would swerve from their duty ; hence, the lord of created beings has established their *perpetual* dependence.

“ Noble families ;” honourable families.

The *Retnácara*.

“ THEY would swerve from their duty ;” *literally* they are utterly lost : they are guilty of disloyalty and other offences ; thus, because they know not what is legal and illegal for those who live exactly according to sacred ordinances, (since they are not qualified to study sacred literature ; ) and because they cannot be instructed, (since they are not in a state of subjection to their husbands, while they assert their own independence ; ) they would violate the duties of their class and the like, for the temporal gratification of enjoying *the society* of strangers ; and be perpetually occupied in viewing paintings and the like. Again ; if they dispute the authority of their protectors, and covet independence, they shall be compelled by the king, when informed of their misconduct, to abide by their duty.

MENU specifies those, who are meant by the term “ protectors ” or husbands and the rest.

## V.

MENU:—THEIR fathers protect them in childhood ; their husbands protect them in youth ; their sons protect them in age : a woman is never fit for independence.

LET her father guard a woman, before her nuptials ; afterwards let her husband guard her ; and, on failure of him, let her son protect her : therefore a woman shares not independence at any period whatsoever. “ Their husbands protect them in youth :” this is indefinite, for sons and others also protect *young* widows remaining with their children.

— CULLÚCABHATTA.

## VI.

YAJNYAWALKYA, in the first chapter of his code :—LET her father

father guard a maiden; let her husband guard a married woman: but let her son guard her in age; or on failure of these, let their kinsmen protect her. In no instance is the independence of a woman *allowed*.

“ MARRIED;” wedded. “ Their kinsmen;” relations of the sons.

The *Cbintámen* and *Retnácara*.

BEFORE her hand be taken *in marriage*, let her father preserve her from improper conduct; after that, let her husband guard her; and after his death, let her sons guard her in old age; on failure of those who have been mentioned, the kinsmen *protect her*; or if there be none, the king (VII) therefore, “ in no instance is the independence of women allowed.”

VIJNYAÑESWARA and SÚLAPAÑI.

## VII.

*Uncertain* \*—BUT on failure of *kindred* on both sides, the king is the ruler and protector of a woman.

## VIII.

HA'RÍTA:— BY violating their *obligation of fidelity* to one only *husband*, and by receiving the embraces of a stranger, vicious women confound families; for a son begotten by an adulterer, while the husband is alive, is a *cunda*, or after his death, a *gólaca*: therefore let the husband guard his wife from the assaults of lust. If she be lost *through vice*, the *honor of the family* is forfeited; if that be lost, the *pure succession of progeny* is lost; through that loss, the sacraments of deities and of manes are destroyed; those sacraments being destroyed, duty fails; duty failing, the *husband's soul* is lost; and, his soul being lost, every thing is lost.

“ THEIR obligation of fidelity to one only husband,” the rule or religi-

\* The fragment varies little from a verse subsequently cited (XIII 3) T.

ous obligation of *fidelity to one only husband*. "By violating that;" by failing therein, they confound "families" or houses. "Progeny;" sons, grandsons, and other offspring.

The *Retnâcara*.

By receiving the embraces of a stranger, women, becoming vicious, confound and mingle families and races; for they introduce the offspring of one man into the family of another. "If the wife be lost," (if she be guilty of violating her duty,) the past generations, father, grandfather and so forth, are defiled; and thence future successive generations of sons and so forth are defiled: by this defilement of progeny, rites in honour of deities, and other religious ceremonies, are polluted: hence duty is not fulfilled; and the soul, therefore, sinks to a region of torment. Or else; through failure of progeny, the merit of rites performed by a son is not obtained, since the man himself has no male issue: and hence, the purpose of human life is unattained by him; for all the purposes of human life (*wealth, virtue, love of God, and final beatitude*) depend for their accomplishment on the merit of duty observed. Thus others explain the text.

## IX.

MENU:—WOMEN must, above all, be restrained from the smallest illicit gratification; for, not being thus restrained, they bring sorrow on both families:

2. Let husbands consider this as the supreme law, ordained for all classes; and let them, how weak soever, diligently keep their wives under lawful restrictions;
3. For he, who preserves his wife from vice, preserves his offspring from suspicion of *bastardy*, his ancient usages from neglect, his family from disgrace, himself from anguish, and his duty from violation.

WOMEN should, especially, be restrained from the smallest illicit gratifications, which produce any evil consequences: much more should they be restrained



restrained from the greatest; for, by neglect of restraint, both the families of their husbands and fathers experience sorrow. CULLU'CABHATTA.

THE sorrow, *brought on both families*, has been described by HA'RÍTA (VIII); *shame and disgrace are also brought on them*.

THEREFORE let husbands know this rule for guarding wives, in the mode described by a subsequent verse, to be the first of all duties incumbent on men of all classes, as well *Brábmānas*, as others: and let even the blind and the lame be diligent in restraining their wives. CULLU'CABHATTA.

“How weak soever:” by this it is intimated, that it is *also* necessary for those who are strong. “Husbands,” or protectors, being expressed in the plural number, comprehend fathers and other protectors abovementioned (V).

THUS, because he, who guards his wife, preserves his offspring, since unmixed and undefiled progeny is obtained; and since he preserves approved ancient usages, the honour of his father, grandfather, and the rest of his ancestry, himself, as the parent of pure offspring, and his duty by means of obsequies performed for him by such offspring; (for *all* these are effected through the purity of his wife;) therefore let him be diligent in guarding her. This may be supplied, from what had preceded.

CULLU'CABHATTA.

THUS, the very same is said by MENU, which has been delivered by HA'RÍTA.

AFTER mentioning mixed classes, PAI'T'HÍNASI thus proceeds,

X.

PAI'T'HÍNASI:—THEREFORE guard wives, lest mixed classes should spring from them.

VIGILANTLY careful, lest mixed classes should spring from their wives, let husbands *therefore* guard them.

XI.

## XI.

*Smṛiti*, \* quoted in the *Retnācara*:—CAUTIOUS men! guard your offspring, and do not suffer the seed of a stranger to be sown in your field: men guard, from the embraces of another, a wife *whom they have married while a virgin*.

THIS obviates *such* a reflection as the following; “they will guard themselves; why should I *be* diligently *watchful*?”

## XII.

VRĪHASPATI:—A WOMAN must be carefully restrained from the smallest illicit gratification; night and day she should be guarded by her mother in law and by other venerable matrons.

THIS indicates the subjection of women to their husband's mother and the rest.

## XIII.

NĀREDA:—AFTER the death of her husband, *the nearest kinsman* on his side has authority over a woman who has no son; in regard to the expenditure of wealth, the government of herself, † and her maintenance, he has full dominion.

2. If the husband's family be extinct, or the kinsmen be unmanly, or destitute of means to support her, or if there be no *śapindas*, a kinsman on the father's side shall have authority over the woman:
3. But if the kindred on both sides fail, the king is considered as the protector of the woman; he shall guard her, and shall chastise her if led away from the path of virtue.

\* Quoted from A PARVATYA. See Book V. v CCLI.

† The preservation of wealth. a various reading in Book V, Ch. VIII.

“ KINSMAN on the husband's side ;” of his father's or mother's race, in the order of proximity. “ Expenditure of wealth ;” gift or other alienation of property. “ Government of herself,” restraint from illicit gratifications. “ Maintenance ;” means of subsistence. Thus, without his consent, she may not give away any thing to any person ; nor indulge herself in matters of shape, taste, smell, or the like : and if the means of subsistence be wanting, he must provide her maintenance. But if the kinsman be “ unmanly” (deficient in manly capacity to discriminate right from wrong) ; or “ destitute of means to support her ” (if there be no such person able to provide the means of subsistence) ; or if there be no *sapindas* ; then, any how determining, from her own judgment, on the means of preserving life and duty, let her announce her affinity in this mode, “ I am the wife of such a man's uncle,” and if that be ineffectual, let her recur to her father's kindred. Or, on failure of these, recourse may be had even to her mother's kindred. But, on failure of these, “ the king shall chastise her, if led away from the path of *virtue* :” consequently, the king has no right to chastise her, in the first instance, but if she desert her husband or other protector, he is competent to reestablish her guardian's authority ; and he shall not impose a fine on account of her deviation from the path of virtue, but on account of her deserting her protector. Again ; the maintenance of a woman, who has no kindred, must be assigned by the king. Thus some explain the law.

## XIV.

MENU :—REPREHENSIBLE is the father, who gives not *his daughter in marriage* at the proper time ; and the husband, who approaches not *his wife* in due season ; reprehensible also is the son, who protects not his mother after the death of her lord.

A FATHER, not giving his daughter *in marriage* at the proper time for disposing of her in wedlock, is culpable : since a text ordains that a damsel should be given in marriage before her courses, the proper time for disposing of her in wedlock precedes her puberty. A husband, not approaching his wife in due season, is culpable : and a son, not protecting his mother after the death of her lord, is despicable.

CULLŪCABHATTA.

A FATHER, not giving *his daughter in marriage*, and a husband, not approaching *his wife in due season*, are both culpable in regard to those women ; since the natural passion, implanted in *the human race* by the divinity, is not to be endured. Hence, these persons should be punished as offenders : but the woman is not justified in misconduct ; for no law permits it. Thus others comment on the text.

## XV.

VRĪHASPATI : — THE father, who gives not *his daughter in marriage* at the proper season, the husband, who approaches not *his wife* in due season, and the son, who gives not support to his mother, are criminal, and shall be punished according to the law.

If a husband approach his wife in due season, her desire of another man, from a wish to bear issue, is obviated ; but, if her passions be vehement, she should be approached by her husband at other unforbidden times.

“ AND the son, who gives not support to his mother ;” from the word “ and ” it also appears indispensable, that the father or husband should give a maintenance to a daughter or wife. Thus some expound the law.

## XVI.

VASISHT'HA : — As often as a virgin's courses recur, who desires and demands marriage with a man of equal class, so many beings are destroyed by the fault of her father and mother : thus is the law declared.

## XVII.

PAIT'URNASI : — BEFORE her breasts are prominent, a girl should be given in marriage : both he, who gives *a damsel in marriage* after her menses have appeared, and he, who receives *such a damsel*, sink to a region of torment ; and the father, paternal grandfather and great grandfather of *each* are born again in ordure : therefore should a damsel be given in marriage before her menses appear. If

· If her father be dead, it should be understood, that the successor to his wealth, or other competent person, *must give her in marriage.*

## XVIII.

YA'JNYAWALCYA :— If there be no persons *competent* to give her in marriage, let the damsel herself choose a suitable bridegroom.

## XIX.

MENU :— THE husband, after conception by his wife, becomes himself an embryo, and is born a second time here below ; for which reason the wife is called *jáyá*, since by her (*jáyaté*) he is born again.

THE husband, impregnating his wife, assumes the state of an embryo, and is born again of her in the person of his son ; that is the very reason for calling a wife *jáyá*, since by her he is born again.

CULLU'CABHATTA.

THE meaning is, that the word is formed with a termination in the sense of containing ; “ she, in whom he is again generated.”

WHAT is deduced from this ? The sage declares *the induction.*

## XX.

MENU :— Now the wife brings forth a son endued with similar qualities to those of the father ; so that, with a view to an excellent offspring, he must vigilantly guard his wife.

BECAUSE it is declared by the law, that she produces a son similar to the father, whether legitimate or illegitimate, (an excellent son, if she submitted to an excellent man ; and a bad son, if she submitted to a vicious man ;) therefore, with a view to excellent offspring, he must vigilantly guard his wife.

CULLU'CABHATTA.

THUS

THUS the expressions of MENU and HA'RĪTA were suitable: " he preserves his offspring *from suspicion of bastardy* " (IX 3); and, " *the pure succession of progeny is lost by her misconduct* " (VIII). And the inferible sense that a wife should be guarded with a view to excellent offspring.

## XXI.

SANC'HA and LIC'HITA:—WOMEN bring forth sons endued with similar qualities to those of the man, on whom their thoughts are fixed in the season of passion; as a black calf springs from a black bull, and a white calf from a white bull. But the influence of the female is great, since mixed classes *thence* originate.

" THENCE " (*from females*) must be supplied.

*The Retnācara.*

" THE influence of the female is great;" the influence of the wife is greater than that of the husband. Thus, although the husband be endued with excellent qualities, the offspring may be vitiated through the faults of the wife.

## XXII.

MENU:—SUCH *women* examine not beauty, nor pay attention to age, whether *their lover be* handsome or ugly, they think it is enough that he is a man, and pursue their pleasures.

2. THROUGH their passion for men, their mutable temper, their want of settled affection, and their perverse nature, (let them be guarded in this world ever so well) they soon become alienated from their husbands.

THEY do not examine desirable figure; nor regard youth or age: but, whether a man be handsome or ugly, they think his manhood sufficient, and receive his embraces. Since, at sight of a man, they desire fruition, since their

their temper is not constant, and since they are naturally void of settled affection, however diligently guarded in this world, they soon become alienated from their husbands, leaning to disloyalty.

CULLU'CABHATTA.

NO man should be confident, that, on account of his youth and beauty, a woman will not recur to any other man, old or ugly. A woman has no settled tenderness even for her family and the like. The cause is mentioned: her temper is naturally mutable; and, through want of settled affection for her husband, she fails in the submission due to him.

### XXIII.

MENU:—YET should their husbands be diligently careful in guarding them; well knowing the disposition, with which the lord of creation formed them.

KNOWING the disposition implanted in them when the universe was framed by the creator, and which disposition is described in the two preceding verses (XXII), let their husbands *therefore* apply the utmost attention to guard them.

CULLU'CABHATTA.

DISLOYAL passion is natural to them, and springs not in particular instances from peculiar defects; and this fault in their dispositions should not be imputed to them: it is derived from nature; and, therefore, they should not be condemned merely for their mutable temper.

### XXIV.

MENU:—MENU allotted to such women a love of their bed, of their seat, and of ornament, impure appetites, wrath, weak flexibility, desire of mischief, and bad conduct.

MENU allotted to women, at their first creation, a propensity to their bed, to their seat and to ornaments, impure appetites, wrath, weak flexibility, mischievous inclinations, and ill behaviour; therefore they must be diligently guarded.

CULLU'CABHATTA.

THE term, explained “weak flexibility,” may signify crooked preceeding, or fraud. Thus MENU declares their defects natural.

## XXV.

MENU:—Women have no business with the texts of the *Vēda*; thus is the law fully settled: having, therefore, no evidence of law, and no knowledge of expiatory texts, sinful women must be as foul as falsehood itself; and this is a fixed rule.

NONE of the ceremonies, at the birth of children and so forth, are performed for females with holy texts. This limitation of the law is fully settled. Hence, through the want of solemn rites accompanied with holy texts, they are not devided of sin; through the want of evidence of law and scripture, they are not acquainted with the system of duties; and having no expiatory texts, (*that is*, being incapable of expiating a sin actually committed, since they are debarred from the silent repetition of expiatory texts;) women are as foul as falsehood *itself*. Such is the restriction of the law. Therefore a woman should be vigilantly guarded; this is implied in the text.

CULLŪCABHATTA.

“HAVING no evidence of law;” wanting that evidence which induces steadiness in engagements and the like. “Falsehood:” their conduct is tainted with falsehood.

The *Retnācara*.

THE text shows a further cause of the evil disposition of women naturally ill disposed: at their birth and so forth, rites are not celebrated with holy texts; hence they are not sanctified. “Having no evidence of law;” or, otherwise interpreted, having no organs of sense (*nirindriyāb*): by this it is intimated, that they have no knowledge of what is lawful and unlawful, although they have visual, mental and other faculties. “And no texts;” by this is denoted their exclusion from the study of the *Vēdas*. From this cause, though *physically* existent, they are *morally* non-existent



or false beings. It follows, that women should be avoided, since they are thus vile: and it is shown, that they cannot, of themselves, preserve virtue, or expiate sins. Thus others expound the text.

## XXVI.

**MENU :—**To this effect many texts, which may show their true disposition, are chanted in the *Véda*: hear now their expiation for sins.

It has been said, that an inclination to disloyalty is natural to women; on this point, he cites the authority of the *Véda*: many revealed texts, which show the true disposition of women, and their disloyal propensity, are read in the *Véda*: hear such of those texts, as are solemn expiations for disloyalty. Since only one text is quoted,\* the meaning is, "hear the text:" and the plural number is used for the singular, under the general rule; "any inflection supplies the place of another in the scriptures and in the works of sages."

CULLU'CABHATTA.

"TEXTS;" passages of holy writ. "The *Véda*;" the scriptures. "Their true disposition;" their natural temper. Of those texts of the *Véda*, hear that, which is an effectual expiation for mental disloyalty; that you may know the true disposition of women. The text should be so supplied.

The *Retnâcara*.

## XXVII.

**DACSHA :—**LIKE a leech, all women, though won by ornaments, apparel and furniture, ever exhaust their husbands.

2. YET a leech sucks a man's blood alone, and so far is more respectful; but the other draws wealth, gain, flesh, seminal juices, strength and pleasure.

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\* Chapter 9, v. 20.

3. IN infancy she is timid, in youth confident; but in age a woman shows *outward* respect to her husband, as if he were a king.
4. LEFT to the guidance of her own will, and unrestrained by affection, she afterwards becomes ungovernable, as a neglected disease *becomes incurable*.

“HER own will;” her own desires. “Ungovernable;” highly mischievous.  
The *Retnacara*.

THOUGH won by ornaments, apparel and furniture, she exhausts her husband, as a leech sucks the human body. Therefore, as a leech, steadily adhering to the body of a man, sucks and drinks his best blood, so do women act. He adds to the illustration: since a leech sucks the blood alone, it is respectful in comparison with women; but these draw wealth and the rest of six things mentioned.

IN infancy she is fearful; in youth she asserts equality; in age she respects her husband no more than grass, for *his* youth is past. On the other reading (*nr̥ṣa vat* like a king, instead of *tr̥ṣa vat*, like grass) the sense is this; that she herself may be esteemed even without youth to *render her amiable*, she honours her husband, like a king, with affected respect.

CONDUCTING herself according to her own will, and unrestrained by the apprehension of violating affection, a woman deviates from the path of duty, (she follows not that, which is ordained to be the path of virtue;) as a disease, such as a fever or the like, suffered to remain in the body, and, through tenderness, unopposed by a cooling regimen, becomes incurable, through the want of medicaments.

## XXVIII.

The *Rámáyana*:—To women not any man is *solely* dear, nor is any one hateful; they embrace every man, as a creeper, growing in the forest, *clings to every tree within its reach*.

THEFORE

THEREFORE it should not be trusted, that there is no apprehension of a woman's desiring some man who is *apparently* hateful to her. She must be guarded from all.

## XXIX.

The *Mahábhárata*:—WOMEN, though born in noble families, *themselves* beauteous, and married to *worthy husbands*, remain not within the bounds of duty; this, NA'REDÁ, is the fault of women:

2. From the want of a motive *for deviation*, or through fear of the people or of their kindred, unbridled women may remain within the bounds of duty, *faithful* to their husbands;
3. But neither through fear *of moral law*, nor through severe reprehension, nor from any motive of *regard for* wealth, nor on account of their connexion with kindred and family, are women constant to their husbands.
4. MATRONS envy women, who live by prostitution, the *bloom of* youth they possess, and the food and apparel they receive.
5. THOUGH men be lame, divine sage! or otherwise contemptible, there is not any man in this world, great sage! insufferable to women:
6. If they have no possible access to men, *O thou inspired by* BRAHMA! they seduce each other; truly they are not constant to their husbands:
7. From not finding men, or through fear of their kindred, or apprehension of stripes or confinement, they guard themselves:

8. But fire is not satiated with wood, nor the ocean with rivers, nor death with all beings, nor woman with man.
9. THIS, divine rage<sup>1</sup> is another hidden quality of all women, at the very sight of a handsome man, the heart of a woman melts with desire.
10. WOMEN bear not much *affection* to their husbands, though giving them what they desire, doing what they wish, and protecting them from danger :
11. They do not so much value the gratification of their wishes, abundance of ornaments, or hoards of *wealth*, as they do sensual pleasures.
12. FINAL destiny, wind, death, the infernal regions, the fire of the ocean, the edge of a razor, poison, venomous serpents and *devouring* fire, all united are *no worse than* women. "

IN FACT all these texts, describing the wickedness of women, only imply, that confidence should not be placed in them, and show, that they are sinful from their want of knowledge to distinguish what is lawful and unlawful. But, at particular times, men also follow implicitly the dictates of lust. Accordingly the *Mithishaiti* expresses, "all creatures, overcome by lust and wrath, &c" and at times, women are found most loyal and constant, as SAVITRI and others

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\* It is not necessary to refer to these texts, on which it is unpleasant to dwell, the object of this work being to show the general principle, as the texts quoted in the next section (particularly V. XIV) do away the usual misapprehension.

## SECTION II.

## ON THE METHOD OF GUARDING WOMEN.

If *then* women regard not their protectors, how can they be preserved from vice? In answer to this question, MENU declares the expedients by which they may be guarded.

CHANDÉSVARA

XXX.

MENU:—No man, indeed, can wholly restrain women by violent measures; but, by these expedients, they may be restrained:

2. Let the husband keep his wife employed in the collection and expenditure of wealth, in purification and *śrāda* duty, in the preparation of daily food, and the superintendence of household utensils.

“HOUSEHOLD utensils,” or it may mean *female ornaments*, as bracelets, earrings, and the like.

No man is able *and* *by* to preserve women from vice, even by forcible restraint, for still they will manifest disloyalty. But, by these means, he may restrain them. The sage mentions those means (XXX 2) by keeping a wife employed in the accumulation and disposal of wealth, in the purification of effects and of *her own* person, in the care of the *sacrificial* fire and the like, in the preparation of food, and in the superintendence of household utensils, as beds, seats, jars, earthen vessels, and the like.

GULLU'CA BHATT

OT

OTHERS explain "purification and *female* duty," sweeping the house and cleaning the vessels used at meals and the like. "Preparation of food;" and the presenting of it and so forth. Occupied in such offices, their minds are calm; hence, and from want of leisure, every wish for commerce with other men is prevented. This artifice MENU declares to be an expedient for restraining women.

## XXXI.

VRĪHASPATI:—THE keeping women employed in the receipt and expenditure of wealth, in the preparation of food, in the superintendence of the household utensils, in purification, and in the care of the *perpetual* fire, is declared to be the mode of restraining women.

"IN purification;" or in the business of cleanliness, as sweeping the house and the like. "In the care of the fire;" in keeping it for the daily oblations of those who maintain a perpetual fire.

## XXXII.

MENU:—BY confinement at home, even under affectionate and observant guardians, they are not secure; but those women are truly secure, who are guarded by their own good inclinations.

GUARDIANS, who are both affectionate and observant.

The *Retnācara*.

THOUGH confined at home, even under persons, who are both affectionate and authoritative, those women are not secure, who, from their evil disposition, guard not themselves; but they, who, excelling in virtue, guard themselves, are truly secure. Therefore a rule of *conduct* should be prescribed to them by announcing the attainment of heaven through the practice of virtue, and punishment in hell for habits of vice. This is declared to be the chief expedient for restraining women.

CULLU'CABHATTA.

XXXIII.

## XXXIII.

MENU:—*WHATEVER* be the *qualities* of the man, with whom a woman is united by lawful marriage, such qualities even she assumes; like a river *united* with the sea.

2. ACŠHAMA'LA', a woman of the lowest birth, being thus united to VASISHT'HA, and 'SA'RANG'I, being united to MAN-DAPA'LA, were entitled to very high honour:
3. These, and other females of low birth, have attained eminence in this world by the respective good qualities of their lords.

A WOMAN, though *naturally* sinful, imbibes virtue from her intercourse with a husband who gives the example of it, and she becomes deserving of respect; but a woman, even though *naturally* virtuous, becomes vicious by intercourse with a vicious man. He illustrates this by a comparison; as sweet water, falling into the ocean of salt water, becomes salt, or falling into the ocean of milk, *becomes milk*, and so forth. ACŠHAMA'LA' (XXXIII 2) was the name of a certain woman married to VASISHT'HA; and 'SA'RANG'I was a female bird, married to a sage named MANDAPA'LA.

“THESE, and other females;” in the plural number instead of the dual: on this CULLŪCABHATTA observes, that, although two only are here celebrated, “these” is expressed in the plural number, because those two are only intended as instances. Others think, it is expressed in the plural to convey the sense of “and the rest;” the meaning therefore is, “these two and the rest, as well as other females.”

## XXXIV.

MENU:—*THUS* has the law, ever pure, been propounded for the civil conduct of men and women: hear, next, the laws concerning children, by obedience to which may happiness be attained in this and the future life.

“ CIVIL conduct of men and women;” the protection to be given by a man to a woman. Or the conduct to be observed in this world; that is, the protection afforded by men to women. Happiness may be attained after death, since heaven is attained; and in this life, by the *very* preservation of a wife, and so forth.

If women be naturally vicious, and be guarded with *such* difficulty, should not marriage be avoided? To obviate this doubt, he declares the production of children to be the motive of marriage.

### XXXV.

MENU:—WHEN good women, united with husbands in expectation of progeny, eminently fortunate and worthy of reverence, irradiate the houses of their lords, between them and goddesses of abundance there is no diversity whatever.

2. THE production of children, the nurture of them when produced, and the daily superintendence of domestick affairs are peculiar to the wife.
3. FROM the wife alone proceed offspring, good household management, solicitous attention, most exquisite caresses, and that heavenly beatitude, which she obtains for the manes of ancestors, and for *the husband* himself.

ALTHOUGH their defects have been declared for the sake of *showing the necessity* of their being guarded; yet, as a remedy is possible, these women, married for the sake of producing children (who are greatly beneficial to *their parents*), become the cause of *their husband's* partaking of eminent prosperity, are entitled to reverence shown by gifts of apparel, ornaments and the like, and render *their own* houses pure. In such houses, women and goddesses of abundance are equal; there is no diversity whatever: as a house, unvisited by the goddess of abundance, does not flourish, so a house, deprived of women, thrives not.

CULLUCABHATTA.

“ GODDESS



“GODDESS of abundance;” the term may signify either beauty, or the goddess LACSHMI. The production of children and the purification of the house are not the only purposes of marriage: the sage mentions others (XXXV 2).

THE construction is this; “the daily business of civil conduct is peculiar to women.”

The *Retndcara*.

THE production of children, the nurture of them when born, and the daily superintendence of worldly affairs (such as the entertainment of guests, kinsmen and friends), are peculiar to women.

CULLU'CABHATTA.

THE sage enumerates the several qualities of women, both those already noticed, and those which had not been mentioned (XXXV 3).

THE production of children, though already mentioned, is repeated to show, that women are worthy of reverence; *that* and offices, in which religious duty is concerned (as the care of the perpetual fire and the like), solicitous attention (*personal* attendance), exquisite caresses, and heaven obtained for his ancestors and himself by the production of children; all these proceed from the wife.

CULLU'CABHATTA.

BUT we thus explain the text; offspring, the nurture of children, and exquisite caresses proceed from the wife, as mentioned in the *Gālicā purāna*.

“THE wife affords delight and male offspring.”

From her proceeds heavenly beatitude obtained through the rites to be performed in the order of a householder; there is not, consequently, any needless repetition. Thus a text of law, quoted in the

*Udvāha tatva*, expresses;—“THE wife call not the habitation alone

alone the home, for the wife is described by that name (*grīha*); with her indeed, a man attains all the purposes of human life.'

AND another text, inserted in the same compilation, declares incapable of sacrifice a man, who has no wife and has not passed the age of forty-eight years ;

" UNTIL he have attained the age of forty-eight years, a man, who has neither son nor wife, is disqualified for performing the sacrifice."

### XXXVI.

YAJÑYAWALKYA :—PERPETUATED offspring and a heavenly abode are obtained through a son, a grandson and a great grandson ; therefore should virtuous wives be respected, cherished and well guarded.

### XXXVII

The *Mahābhārata* :—THESE women, *graced* with the name of goddesses of abundance, should be treated with honour by him, who desires wealth : BHARATA ! a lovely woman, restrained from vice, is a goddess of abundance.

MENU declares them " worthy of reverence," the *Mahābhārata* declares, they " should be treated with honour," and subjoins a motive for treating them with reverence.

### XXXVIII.

The *Mahābhārata* :—WHERE females are honoured, there the deities are pleased, but where they are unhonoured, there all religious acts become fruitless.

2. WHEN female relations are made miserable, even then is that family annihilated ; for the houses, on which they pronounce

pronounce a curse, *perish*, as if destroyed by a deadly sacrifice :

3. *Those houses*, king of the earth ! neither flourish nor increase, which are not graced by the goddess of abundance.

“ FEMALE relations ;” sisters, and women of a family.

AMERA.

THE meaning is, that houses, on which female relations pronounce a curse (on which they pronounce an imprecation in consequence of suffering from the want of a suitable maintenance and the like), are extirpated.

### XXXIX.

MENU:—WHERE females are honoured, there the deities are pleased ; but where they are dishonoured, there all religious acts become fruitless.

2. WHERE female relations are made miserable, the family of him, who makes them so, very soon wholly perishes ; but, where they are not unhappy, the family always increases.

3. ON whatever houses the women of a family, not being duly honoured, pronounce an imprecation, those houses, with all that belong to them, utterly perish, as if destroyed by a sacrifice for the death of an enemy.

4. LET those women, therefore, be continually supplied with ornaments, apparel, and food, at festivals and at jubilees, by men desirous of wealth.

“ FEMALE relations ;” the women of a family, as sister, son’s or nephew’s wife, and the rest.

The *Retnácara*.

“ ARE made miserable;” are made wretched from the want of maintenance or the like. “ Perish, as if destroyed by a sacrifice;” by a fire *lighted for a sacrifice to be made* for the death of an enemy : a rhetorical simile.

#### XL.

MENU :—IN whatever family the husband is contented with his wife, and the wife with her husband, in that house will fortune be assuredly permanent.\*

#### ॐ XLI.

THE *Mahābhārata* :—*Women* must be honoured and adorned by their own fathers and brethren, and by the fathers and brethren of their husbands, if they seek abundant prosperity.

#### XLII.

MENU :—*Married women* must be honoured and adorned by their fathers and brethren, by their husbands, and by the brethren of their husbands, if they seek abundant prosperity.

" Blossoms," to be placed in the tresses of their hair.

IN the third chapter of his work, on the subject of an embryo in the third month of pregnancy, YA'JNYAWALCYA has the following text.

#### XLIV.

YA'JNYAWALCYA :—BY not gratifying *the* longings of a pregnant woman, the embryo suffers injury, becomes deformed, or even perishes; therefore should women be treated with affection.

FROM what has been stated, it appears, that reverence must necessarily be shown to a wife, sister, and the rest, by gifts of food and clothes, and of ornaments, bestowed, according to his ability by her husband, her brother, or some wealthy relation, as the case may be: this is a settled rule. If it be not done, the omission is punished with misfortune; for texts show, that the family perishes: therefore women shall not *in such cases* apply to the king; but he being privately informed, must compel their relations to supply them with food and the like; and the rule must be settled, as in the supplementary chapter of the code of law.

#### XLV.

MENU :—SHOULD a man have business abroad, let him assure a fit maintenance to his wife, and then reside *for a time* in a foreign country; since a wife, even though virtuous, may be tempted to act amiss, if she be distressed by want of subsistence:

2. While her husband, having settled her maintenance, resides abroad, let her continue firm in religious austerities, but, if he leave no support, let her subsist by *spinning and other blameless arts*.\*

BUT, if her husband go to a distant abode, without providing for her sub-

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\* See v. CXVI.

sistence, clothing and the like; let the woman live by spinning and other blameless arts.

CULLU'CABHATTA.

#### XLVI.

MENU:—WHEN twice-born men take wives, both of their own class and others, the precedence, honour, and habitation of those wives, must be settled solely according to the order of their classes.

WHEN twice-born men marry wives, both of their own class and of other tribes, then the precedence in regard to respectful language and superiour share of the heritage, honour shown by gifts of apparel, ornaments and the like, and habitation or preferable apartment of those wives, must be settled according to the order of the classes.

CULLU'CABHATTA.

OTHERS hold the precedence to be that, which is announced in the subsequent text; namely, the duties of the eldest wife, personal attendance and the like.

#### XLVII.

MENU:—To all such married men, the wives of the same class only (not wives of a different class by any means) must perform the duty of personal attendance, and the daily business relating to acts of religion.

ATTENDANCE on the person of her husband (as presenting food to him and the like), business relating to acts of religion (as the distribution of alms and the like, the entertainment of guests, and the care of the sacrificial utensils), and other daily business, the wives of the same class only must perform for twice-born men, not wives of a different class by any means.

CULLU'CABHATTA.

DISPUTES between his wives must be thus reconciled by the husband: and this supposes, that he has a wife of the same class with himself.

XLVIII.

## XLVIII.

YAJNYAWALKYA.—If he have a wife of equal class, let him not employ another in business relating to acts of religion, *but*, if there be several wives of his own class, such duties are lawfully performed by no other than the eldest.

If there be a wife of equal class, he shall not employ another in business relating to religious duty, but if there be several wives of his own class, then he shall not employ any other than the eldest of them, *in such offices* hence, if the first married wife be alive, she must be preferred in all matters relating to acts of religion

CHANDESWARA and VIJNYĀNE SWARA.

If a wife of equal class be alive, he shall not employ one of unequal class in the care of the sacrificial fire and the like, if there be several wives of his own class, he must so employ the eldest alone. Another case is mentioned in the *Cā'bandoga perisishṭa* (L 3) \*

^SULAPANI.

SOME remark, that two or three cases might be established, if the youngest wives be pre eminent in virtue, or if several were married at the same time † But the uncertainty, as to the rule to be followed *in such cases*, is not liable to any objection for the text only directs honour to be shown as enjoined, and the rest is mentioned in another place

## XLIX

VISHNU.—If many wives of his own class be living, with the eldest alone should the husband conduct business relating to acts of religion, even though his younger wives be

\* The text is cited anonymously at full length but differing from another text in one word only and that not affecting the sense I refer the citation to that other text subsequently quoted from CAṬYAYANA  
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† By eldest wife is meant not the eldest woman but the wife first married and after her death the next married has not a right exactly to the same precedence because she is not the wife married first of all of  
duḥ this will be evident in the sequel T

dearer to him; but if there be no wife of equal class, the business may, in a case of distress, be executed by that wife only, who is of the class next below him: yet let not a twice-born man ever *perform holy rites with the aid of a Śūdrā wife*.

If there be no wife equal in class, the business relating to acts of religion may be accomplished by her, who belongs to the class next below him. This is also intimated by MENU; "the precedence must be settled according to the order of the classes" (XLVI). "But let not a twice-born man ever perform holy rites with the aid of a Śūdrā wife;" this denotes, *that he may not do so*, even though he have no wife of any other class but that of the Śūdrā: else the terms of the text would be unmeaning. To fulfil their duty, twice-born men should marry women of twice-born classes: and, from the expression, "the business may, in a case of distress be executed by a wife of the class next below him;" and from that which immediately follows, "but let not a twice-born man ever &c;" it is deduced, that a *Brāhmaṇa*, in the utmost distress, may even employ a wife of the commercial class in such offices. Thus some expound the law.

#### L.

CĀTYĀYANA, quoted in the *Ch'handōga peris'isht'a*:—LET him, who has many wives, employ one of equal class in the care of the sacrificial fire, and in attendance on himself; but, if there be many such, let him employ the eldest in those duties, provided she be blameless;

2. Or he may employ, in such offices, any one of them, who is mother of an eminent son, who is obedient to his commands, affectionate, capable of good management, kind in discourse, and well disposed;
3. Or, without partiality, he may perform the rites of religion with all his wives successively, in periods settled according to their respective precedence; or settled of his own authority to the best of his knowledge.

4. WE



4. WE know, that the precedence of women originates in fortunate destiny; nor can a husband, by a slight show of reverence, content wives of twice-born classes:
5. That woman gains a fortunate destiny, who, constantly obsequious to her husband, worships BHAVANÌ in this world, with many acts of austerity, and reverently attends the sacrificial fire.

IF there be many of them, and the eldest wife be blameless, he must employ her in matters relating to acts of religion. But, if the eldest wife be blamable, then, since there is no certainty *which should be employed* among several wives equal in class, it should be determined by the second rule (L 2).

The *Retnâcara*.

“MOTHER of an eminent son;” one, who has borne a blameless son. If the eldest of all the wives be censurable, and the rest be equal *in merit*, they should, according to circumstances, be employed in such duties in daily succession: this some think to be fully intended in the *Retnâcara*.

HE, who has wives both of his own class and of others, should assign, to the wife of equal class, the care of the *sacrificial* fire, the hospitable entertainment of strangers, and attendance on himself; but, if there be many of his own class, to the eldest wife, provided she be not disabled by sickness, nor chargeable with a vicious disposition or the like. On another reading (*agni śiṣṭyādi sūśrūṣhām*, instead of *agni śiṣṭātma sūśrūṣhām*, care of the *sacrificial* fire and attendance on himself) the sense is, attention to his commands in respect of supplying the fire and the like, and other attendance on her husband.

OR he may constantly employ, in the care of the sacrificial and other offices relating to acts of religion, and in attendance on his own person, that wife, among those of equal class, who is mother of a son; or, avoiding partiality, he may perform the daily *rites of religion* with the assistance of his wives in regular succession, allowing five days and so forth to each according to their respective precedence; or distributing periods of his own authority,

and

and to the best of his knowledge. The precedence of women depends on their fortunate destiny; hence the precept for employing the eldest wife in *personal* attendance supposes her eminently fortunate: and that fortunate destiny has been obtained by obedience to her husband, by many austerities, by worship of BHAVĀNĪ, and by attention to the sacrificial fire, in a former existence. Therefore a woman, though eminently fortunate in her present existence, should pay adoration to BHAVĀNĪ and so forth, for the sake of auspicious fortune in a future birth. This states the conduct incumbent on women; the preceding texts (L 1. 2. and 3.) had stated the conduct incumbent on the husband.

*The Perisishṭa Pracāṣa.*

“PRECEDENCE originates in fortunate destiny;” this supposes superiority in virtue, since that is expressed in the last verse. The woman of equal class is superiour to all the rest; for the approbation of the law prevails over the affection of the husband. “Not by slight show of reverence &c:” thus, since what is executed by an auspicious wife, is best executed, she is best qualified for offices pertaining to acts of religion. Thus others expound the law.

## LI.

DACSHA:—THE first is the wife married from a sense of duty; the second promotes sensual gratification: sensible, not moral, effects proceed from her.

2. THE first wife is called the wife whom acts of duty concern, provided she be faultless; but, if she be faulty, there is no offence in employing another wife endued with excellent qualities.

“THE wife, whom acts of duty concern;” who officiates in acts of religion, and so forth. From the second wife proceed sensible effects (subject to the test of sensation, as the present gratification of caresses and the like); not moral effects, or the last solemn rites and the rest of the acts relating to another world and so forth. But moral consequences follow the production of

a son; that however in a successive order, by the birth of a son from the second wife, if the eldest wife be childless. From this text it appears, that the seniority, noticed in former texts (XLVIII and XLIX), is settled, not according to age, but according to the priority of nuptials. This is the principal case; he mentions a secondary one (LI 2): if the eldest wife be faulty, there is no offence in employing another on business relating to acts of religion; therefore another wife, endued with excellent qualities, should be employed.

THE wife described in the *Cb'bandôga perîsîṣṭa* (L 2) should be considered as the wife endued with excellent qualities; if there be no such grounds for selection, it may be settled as directed in the *Cb'bandôga perîsîṣṭa* (L 3). Since the *Cb'bandôga perîsîṣṭa*\* completes the extracts of the *Sâma-vêda*, the adjustment by successive daily periods should be admitted without question by all followers of the *Sâma-vêda*; for, were it questioned by any person, it must be admitted, even though directed by another than the particular *Ṣâc'hâ*, by which that person is governed. For it is said, "what is enjoined in their own *Ṣâc'hâs*, or declared by another, but not inconsistent with their own, should be followed by the wife, as the practice of maintaining a perpetual fire and the like."

## LII.

MENU and VISHNU, after mentioning a *Sûdrâ* wife:—His sacrifices to the gods, his oblations to the manes, and his hospitable attentions to strangers, must be supplied principally by her; but the gods and manes will not eat such offerings; nor can heaven be attained by such hospitality.

OF him, whose sacrifices to the gods, whose oblations to the manes, whose hospitable attentions to strangers, are supplied by a wife of the servile class, the gods and manes will not eat the offerings; nor does he attain heaven.

The *Râtagara*.

SINCE the gods and manes eat not his offerings, he does not attain heaven; and his daily rites are unfulfilled. Although guests eat the food with a cor-

\* The meaning of the name is "consummation, or completion, of the followers of the *Sâma-vêda*."

poreal mouth, still the duty of hospitable attention is not thereby truly fulfilled : consequently he attains not heaven. If any person, through ignorance, follow a path repugnant to these rules, the king, any how informed of it, should investigate the matter and restrain him. This construction must be admitted; else the text (XLVI), and others on the same subject, are uselessly placed under the title of judicial procedure, in the institutes of MENU.

### LIII.

DACSHA :—DWELLING in a house, *as a householder*, is *practised* for the sake of happiness, and that happiness depends principally on the wife ; she is *indeed* a wife, who is attentive to precept, obedient to command,

2. And obsequious *to her lord*, who never speaks unkindly, who is careful in household management, virtuous, and prolific : a woman endued with such qualities is, no doubt, a goddess of abundance.
3. SHE, whose temper is cheerful, who is ever attentive to her place, respectful and affectionate to her husband, is *truly* a wife ; any other is useless :

“ For the sake of happiness ;” since happiness may be attained in another order besides those of devotion. “ Who never speaks unkindly ;” who avoids harsh language. “ Her place ;” her habitation, bed, seat and the like. “ Respectful,” reverent. This details the qualities intended by the expression, “ endued with excellent qualities.”

### LIV.

VYASA :—LET the wife of a virtuous man rise before him, be diligent in household management, repose on an humbler bed and seat, avoid unkind discourse, and pursue his benefit.

AFTER the husband and wife have slept through the night, let her rise first

at dawn of day ; let her not require an equal bed and seat ; and let her perform that, by which her husband may be benefited.

## LV.

DACSHA :—WITH sorrow does he eat, who has two contentious wives ; dissention, mutual enmity, meanness and pain *distract his mind.*

BUT, although he have two wives, if they be complacent, his food is tasted with pleasure ; no strife or contention exists ; no mutual enmity ; no endurance of pain ; no sorrow.

## LVI.

MENU :—FOR a whole year let a husband bear with his wife, who treats him with aversion ;, but, after a year, let him deprive her of her separate property, and cease to cohabit with her.

WITH his wife, who has contracted a dislike of her husband, let him be patient for a whole year ; but, after that period, taking back from his wife, who treats him with aversion, the ornaments and other property given by himself, let him cease to approach her ; but mere food and clothes must be allowed to her.

CULLU'CABHATTA.

THAT her hatred should be endured for a whole year, is approved ; within that period, a husband, proposing to forsake her, should be prevented by the interposition of friends and by other means of conciliation : but, after a year, there is no offence in his forsaking her.

## LVII.

MENU :—SHE, who neglects her lord, though addicted to gaming, fond of spirituous liquors, or diseased, must be deserted for three months, and deprived of her ornaments and household furniture :

2. But

2. But she, who is averse from a mad husband, or a deadly sinner, or an eunuch, or one without manly strength, or one afflicted with such maladies as punish crimes, must neither be deserted nor stripped of her property.

THAT woman, who, omitting due attention and the like, neglects a husband addicted to gaming and similar vices, fond of inebriating liquors, or diseased, must be unapproached for three months, and deprived of her ornaments, her bed, and other furniture.

CULLU'CABHATTA.

HERE one addicted to intoxication, but not degraded, is meant. As her neglect of a depraved husband is a slight offence, the punishment is small; but, if she repeatedly neglect him, it is proper, that she should be repeatedly forsaken.

BUT she, who attends not a husband, whose mind is alienated by the effect of air or other constitutional element, or a deadly sinner (as described in the eleventh chapter), or unmanned, or destitute of manly strength (from an obstruction of the seminal juices or the like), or degraded because he is afflicted with leprosy or a similar disease, must not be deserted, nor deprived of her property.

CULLU'CABHATTA.

"As described in the eleventh chapter;" for there crimes in the first degree and so forth are mentioned.\*

"ONE without manly strength;" impotent, though apparently possessing manhood. "Aversion from a husband;" want of diligent attention, not absolute desertion; for a text declares,

#### LVIII.

A HUSBAND, who is not an outcast, should not be forsaken by women desirous of happiness in another world.

AND it is *thus* shown, that a husband, who is not degraded, may not be forsaken.

## LIX.

NA'REDA:—A HUSBAND, who abandons an affectionate wife, or her, who speaks not harshly, who is sensible, constant and fruitful, shall be brought to his duty by the king with a severe chastisement.

A HUSBAND, deserting a wife endued with excellent qualities, to connect himself with another wife and so forth, incurs a severe chastisement; that is, the punishment of a thief; for, on the subject of the punishment of robbery,

## LX.

VISHNU says:—THE man, who deserts a faultless wife, *shall suffer the same punishment.*

## LXI.

DE'VALA:—No atonement is ordained for that man, who forsakes his own wife, through delusion of mind, deserting *her* illegally; nor for him, who forsakes a virtuous son.

“ DESERTING-illegally;” abandoning *her* contrary to law.

*The Retnâcara.*

“ DESERTING illegally ” is an epithet of the preceding term; thus the sense is, “ that man, who abandons his wife illegally, or forsakes a virtuous son.”

## LXII.

DE'VALA:—A MAN may exclude from his bed, or from pilgrimage (*for the term is explained in both senses*), a wife who is afflicted with leprosy, degraded from her class, barren, or insane, whose courses are stopped, or who is wicked; but *he may not exclude her from all business.*

“ FROM his bed ;” according to the *Retnâcara*. Others expound it “ from pilgrimage,” but in a general sense, comprehending caresses and the like.

“ Not from *all* business ;” not from business of which she is capable.

—SU’LAPA NI.

WOMEN afflicted with leprosy, and the rest, are excluded from sexual intercourse : commerce with their husbands is forbidden ; but they are not universally excluded from all business. However, women degraded from their class, and the rest, are also rejected in matters pertaining to acts of religion. Of these women, she, who is afflicted with leprosy, is debarred from commerce with her husband, because intercourse is improper ; she, who is degraded, lest a taint of sin be contracted from her ; she, who is barren, because it would be vain ; she, who is insane, because the text forbids it, or because she is considered as tainted with sin ; she, whose courses are stopped, because *the probability of* conception may be questioned ; and she, who is wicked, because she is an object of aversion.

### LXIII.

NA’REDA:—IT is a crime in them both, if they’ desert each other, or if they persist in mutual altercation, except in the case of adultery by a guarded wife.

2. LET a man banish from his house a wife, who embezzles all *his* wealth under pretence of female property, or who procures an abortion, or who wishes the death of her husband.

“ CRIME ;” sin.

The *Retnâcara*.

UNLESS a wife, who is diligently guarded, be disloyal, both husband and wife, forsaking each other, are guilty of a heinous sin ; but there is none in abandoning a disloyal wife. Thus some expound the text.

“ WHO



“ WHO embezzles all *his* wealth under pretence of female property ;”  
one, by whom all property is embezzled as female property.

*The Retnácara.*

THAT is, as her own female property.

A WIFE, by whom all *his* wealth is falsely included in female property.

*The Calpa drúma.*

“ LET him banish from his house ;” banishing her from the principal habitation, let him assign her a *separate* dwelling within his close. Thus some expound the law.

#### LXIV.

*Uncertain*:—LET him banish from the house a wife, who constantly dissipates wealth, and who speaks unkindly, and her, who eats before her husband :

2. Let him never dignify with his love a barren wife, nor her, who bears only daughters, nor one, who is ever contumacious ; if he do, he partakes of her faults.

#### LXV.

MENU :—THAT woman, who, having bathed after her courses, refuses the approaches of her husband, let him banish, proclaiming her, in the middle of the town, guilty of infanticide.

2. AND her, who, through aversion from her husband, falsely pretends to have her courses, let him banish, proclaiming her, in the presence of kinsmen, guilty of infanticide.

“ AVERSION ;” hatred. In the preceding case a motive is supposed in the want of affection, but short of hatred ; thus the texts are not without a difference.

OR the last text relates to many instances of *deception in regard to her courses*; *the first concerns a single refusal.* The *Retnâcara.*

“PROCLAIMING her offence;” announcing her guilty of infanticide; because she has opposed the procreation of an embryo, declaring her equally guilty with the slayer of an infant. Her refusal of going near her husband is the subject of the first text; the subject of the second is her refusal of his caresses, through hatred, though she have attended him. Such is the distinction according to other *lawyers*. On this construction, since the first case does not clearly state a motive different from hatred, the sense of the last text is included in the first; if she deceive her husband many times in regard to her menses, she has of course deceived him in one instance.

#### LXVI.

BAUDHA'YANA:—PRUDENT men forsake a wife, who neglects due attendance, who is barren or immoral, or who frequents the houses of strangers; *they instantly forsake one who speaks unkindly*:

2. In the tenth year a man may forsake one, who bears no children; in the twelfth, one who bears daughters only; in the fifteenth, one whose children are *all* dead; but instantly, one who speaks unkindly.

“IMMORAL;” vicious. “They instantly forsake one who speaks unkindly:” they forthwith abandon her. Thus, a man should endeavour to reclaim one, who neglects due attendance and so forth; but no such endeavour is used with one, who speaks unkindly. A man may forsake a barren wife in the tenth year after the period, when pregnancy might have been expected; and one, whose children are *all* dead, in the fifteenth year after the death of her children.

#### LXVII.

MENU:—A WIFE, who drinks any spirituous liquors, who acts immorally, who shows hatred to her lord, who is incurably

*rably* diseased, who is mischievous, who wastes his property, may at all times be superseded by another wife.

A WIFE, who is addicted to the use of any forbidden spirituous liquor, whose conduct is vicious, who is disposed to act in opposition to her husband, who is afflicted with leprosy or other *similar* disease, who is disposed to injure her husband, and who continually squanders *his wealth*, may be superseded : that is, another marriage may be contracted, though she be living.

CULLÚCABHATTA.

A *second* marriage, or *one* subsequent to hers, contracted by her husband, is supercession.

#### LXVIII.

YA'JNYAWALCYA:—ONE, who drinks inebriating liquors, who is *incurably* diseased, who is quarrelsome, or barren, who wastes his wealth, who speaks unkindly, who brings forth only daughters, may be superseded by another wife; and so may she, who manifests hatred to her husband.

WHO drinks spirituous liquors, whether she be of the servile, or other class; for the prohibition is general.

#### LXIX.

HALF his body perishes, whose wife drinks intoxicating liquors.

“ DISEASED” (LXVIII); infected with a lasting malady. “ Quarrelsome;” contentious. “ Barren;” unprolific. “ Who wastes his wealth;” who dissipates his property. “ Who speaks unkindly;” whose discourse is evil. “ Who brings forth daughters;” who bears daughters only. “ Who manifests hatred to her husband;” who acts, on every occasion, injuriously to him.

The *Mutáshard*.

“ ONE, who drinks inebriating liquors;” meaning the wife of a twice-born

born man. " Diseased;" and *therefore* incapable of household affairs. " Quarrelsome;" or wilful. Naturally " barren." " Who attempts her own life" (for the gloss substitutes *átmagbñi* for *art'bagbñi*); who attempts suicide by hanging herself or otherwise. " Who speaks unkindly;" 'to her husband' must be supplied. " Who brings forth daughters;" who bears only daughters. " Who manifests hatred to a man;" who detests the son of *her husband* by another *wife*, and so forth.

The *Dīpācalicā*.

THE text cited (LXIX) concerns a twice-born man; for those, who are not degraded in consequence of drinking spirituous liquors themselves, are not degraded in consequence of their wives drinking intoxicating liquors. Such is the opinion intimated in the *Dīpācalicā*. The wives of those, who are not permitted to drink inebriating liquors, must be forsaken, if they be addicted to the evil practice of intoxication from drinking such liquors; for they are degraded: but the desertion of all degraded women is enjoined in another text. This remark is made by other *commentators*.

#### LXX.

MENU:—A BARREN wife may be superseded by another in the eighth year: she, whose children are all dead, in the tenth; she, who brings forth *only* daughters, in the eleventh; she, who speaks unkindly, without delay.

IN the eighth year of barrenness, counted from the first season, she may be superseded: one, whose children are *all* dead, in the tenth; and one, who bears *only* daughters, in the eleventh: but she, who speaks unkindly, without delay, provided she have no son, *for*, if she have male issue, she may not be superseded, since that is prohibited by another sage (LXXI).

CULLU'CABHATTA.

#### LXXI.

If his wife be virtuous and have borne a son, let not a man contract another marriage, unless he do so on *the loss of his wife or son*.

" VIRTUOUS"

“ VIRTUOUS” here intends speaking affectionately and so forth. No inconsistency with the text of BAUDHA’YANA (LXVI) can be here alleged; for he speaks of desertion, but MENU speaks of a second marriage. It must be noticed, that it appears from the text of MENU (LXX), which permits the superfession of a barren wife in the eighth year and so forth, and from the other text (LXXI), which forbids the superfession of a virtuous wife who has borne a son, that a second marriage should not be contracted without some fault on the part of the first wife. But marriages with women of the four classes may be contracted by an amorous man, with the consent of his first wife any how obtained.

VIJNYA’NE’SWARA, quoting the following text with this remark, ‘YA’JNY-  
 ‘AWALCYA denounces *punishment* against one who supercedes *his wife* with-  
 ‘out just cause for superfession,’ adds, ‘he who forsakes, that is, supercedes,  
 ‘such a wife, shall be compelled by the king to pay the third part of his pro-  
 ‘perty.’

#### LXXII.

YA’JNYAWALCYA:—HE, who forsakes a wife, though obedient to his commands, diligent in household management, mother of an excellent son, and speaking kindly, shall be compelled to pay the third part of *his wealth*; or, if poor, to provide a maintenance for that wife.

BUT the author of the *Dipacalid* has not explained this desertion as consisting in superfession.

#### LXXIII.

MENU:—BUT she, who, though afflicted with illness, is beloved and virtuous, must never be disgraced, though she may be superceded by another wife with her own consent.

WITH the assent of her again, who, though afflicted with disease, is obedient to her husband, and virtuous, another marriage may be contracted; but she must never be disgraced.

CULLU’GADHATTA-

“ AFFLICTED”

" AFFLICTED with illness" is not to be taken in a large sense, comprehending accidental barrenness and the like; for progeny is declared necessary. This is remarked by other *lawyers*.

## LXXIV.

YA'JNYAWALCYA:—BUT a superseded wife must be maintained; else a great offence is committed.

THOUGH superseded by another wife, she must be treated with courtesy, and receive gifts and respect as before; else, (that is, if she be not maintained,) a heinous sin is committed, and a fine is incurred as will be mentioned.

VIJNYĀNEŚVARA.

BUT no reverence, say others, is due to a degraded woman.

" A FINE, as will be mentioned;" alluding to the forfeiture of a third part of his property (LXXII). It should be here noticed, that a woman addicted to inebriating liquors (LXVIII) comprehends, in a general sense, any woman liable to abandonment, as declared by other sages.

## LXXV.

MENU:—IF a wife, legally superseded, shall depart in wrath from the house, she must either instantly be confined, or abandoned in the presence of the whole family.

THAT wife again, who, being superseded, departs in wrath from the house, should be instantly chastised with a rope or the like, and compelled to stay; or, if her resentment cannot be repressed, she must be abandoned in the presence of her father and the rest of her family.

CULLU'CABHATTA.

THIS abandoning of her in the presence of her family is a repudiation proclaimed to all in this form, " she is now rejected by me;" and afterwards, offences committed by that woman do not affect the man.

LXXVI.

## LXXVI.

VAŚISHT'HA :—FROM connubial intercourse, from pilgrimage, from what pertains to acts of religion, these four should be rejected; *namely* one, who yields herself to her husband's pupil, or to his spiritual parent,

2. And specially one, who attempts the life of her lord, or who converses with the vilest of men.

"VILE;" despicable, as a *Gbāndāla* or the like.

The *Retnācārā*.

"VILE;" abject, begotten in the inverse order of the classes.

The *Dīpacalīcā*.

OTHERS add, that "rejection" means exclusion from connubial intercourse and the rest.

## LXXVII.

YA'JNYAWALKYA :—FROM disloyalty *in thought* a woman is purified by her courses; but, in case of conception *by unlawful commerce*, desertion is enjoined by the law; and so, in the case of her destroying an embryo, or slaying her husband, or committing any sin in the first degree.

SINCE a text of MENU expresses, that a woman, whose thoughts have been unchaste, is purified by her monthly discharge,\* this purification by her courses concerns mental disloyalty. But, if she have conceived by a man of low class, she must be forsaken; of course expiation is suggested in case of disloyalty in mind or body, provided she do not conceive. If she destroy an embryo, slay her husband, or commit any sin in the first degree, she must be forsaken.

~SŪ' LAPĀ'NI.

VIJNYĀNE'SWARA concurs in that exposition; but explains "in case of

\* Chapter 5, v, 108.

conception," in case of pregnancy by commerce with a man of the servile class, and quotes the following text of law.

## LXXVIII.

WIVES of *Bráhmaṇas*, *Cshatriyas* and *Vaiśyas*, approached by a man of the servile class, are purified by penance, provided they bring forth no children by *such commerce*; and not otherwise.

## LXXIX.

HARÍTA:—A MAN should avoid her, who has destroyed an embryo, has criminally conversed with a man of low class, with a pupil, or with a son, is addicted to drinking or to brawls, or wastes property or *stores of grain*.

## LXXX.

MENU:—THAT a woman, who follows her own will, should be forsaken, is ordained by the law; but let not a man slay his wife, or mutilate her person:

2. VIVASWAT\* declared, that a woman, wilfully disloyal, should be forsaken, not slain nor disfigured; a man should avoid the slaughter of women.

He declared, that she should not be slain nor disfigured.

The *Retnácara*.

## LXXXI.

NA'REDA:—If a woman be disloyal, ignominious tonsure, the lowest bed, the meanest food, the worst habitation, and the task of removing filth, constitute her punishment.

## LXXXII.

YAJÑYAWALKYA:—LET a man keep a disloyal wife deprived



ed of her rights, squalid, maintained on a ball of grain alone, subdued, and *only* suffered to repose on the meanest bed.

ON this CHANDE'SWARA remarks, that 'rejection and other penalties are denounced against disloyal wives, according as the offence is heinous or venial. the rule of decision must depend on the several distinctions of disloyalty.' Meaning wilful and casual disloyalty, and other distinctions. But VIJAYA'NESWARA says, she, who is disloyal, should be kept by her husband in his own house "deprived of her rights," that is, divested of her right to maintenance, to jewels and the like; "squalid," or destitute of collyrium, perfumed unguents, apparel and ornaments; "subdued" by restricting her food to the mere sustenance of life, and by other expedients; and only suffered to repose on the meanest bed, or on the bare ground: *let him so treat her*, for the sake of inducing repentance, not for the sake of atonement; since penance is separately mentioned.

MENU:—A WIFE, excessively corrupt, let her husband confine to one apartment, and compel her to perform the penance ordained for a man, who has committed adultery.\*

SLEEPING on the bare ground and so forth is her punishment, according to other lawyers.

To prevent the repetition of disloyalty, let him confine her in her own apartment, allowing her a ball of rice *only* for her sustenance.

^Sū'LA'PA'NI.

### LXXXIII.

VRĪHASPATI: — A WIFE, who is disloyal *though* maintained and guarded, let a man keep in his house, squalid in her person, suffered only to repose on the lowest bed, and maintained on a ball of grain alone:

\* The last hemistich *only* was inserted, I cite the whole verse, as the quotation would not otherwise be intelligible. T

2. But she, who has *criminally* conversed with a man of low class, may legally be forsaken, or *even* put to death.

SOME remark, that the prohibition of putting a wife to death (LXXX) does not extend to the case of adultery with a man of low class.

∴

#### LXXXIV.

*Smṛiti*, quoted in the *Mitācsharā*:—HE, who refuses to approach his wife, when she has bathed after her courses, doubtless sinks to the region of horror, where the flayers of priests are tortured.

#### LXXXV.

YAJNYAWALCYA:—SŌMA gave them fairness; a *Gand'harva* endowed them with a charming voice; and the regent of fire, with universal purity: hence women are truly pure.

THEREFORE, in respect of universal contact, embraces and the like, women are considered as pure and undefiled.

VIJNYA'NE'SWARA.

A MAN, therefore, must necessarily approach an unoffending wife at the prescribed season, else he would be criminal, and his wife would not be guarded. All this must be maintained by the king

## CHAPTER II.

## ON THE DUTIES OF A WIFE.

## SECTION I.

ON THE CONDUCT ENJOINED TO WOMEN, WHOSE PROTECTORS ARE PRESENT.

LXXXVI.

**M**ENU:—By a girl, or by a young woman, or by a woman advanced in years, nothing must be done, even in her own dwelling place, according to her mere pleasure:

2. In childhood must a female be dependent on her father; in youth, on her husband; her lord being dead, on her son; *if she have no sons, on the near kinsmen of her husband; if he left no kinsmen, on those of her father; if she have no paternal kinsmen, on the sovereign*; a woman must never seek independence.
3. NEVER let her wish to separate herself from her father, her husband, or her sons; for, by a separation from them, she exposes both families to contempt.

Thus, if she receive the caresses of any man but her husband, in consequence of her separation from these protectors, both families are dishonoured.

preparation of food and condiments, the lowest seat and bed, such is declared to be the proper conduct of women.

"PREPARATION of food and condiments," the dressing of victuals and

## LXXXVII.

YA'JNYAWALCYA:—CAREFUL of the domestick furniture, diligent in the management of the household affairs, cheerful, avoiding expense, let her show reverence to her husband's parents, obsequiously honouring her lord.

CAREFULLY repositing, in their places, the domestick furniture, or seats and utensils employed in the house; as the pestle, mortar and winnowing basket and the like, in the place where grain is husked; and the grinding stone and pebble together, in the place where things are ground; and so forth.

*The Mitacsharâ.*

‘SU’LAPA’NI *also explains the same term, ‘repositing the household utensils.’*

## LXXXVIII.

*Smṛiti*, quoted in the *Retnâcara*:—AN affectionate well-wisher to her lord, strict in her conduct, keeping her senses in subjection, she acquires renown in this world, and, after her death, the highest abode.

ENTERTAINING good wishes founded on affection.

‘SU’LAPA’NI.

“AFFECTION,” exclusive mental regard. and wishing that, which is best in a moment of distress.

VIJNYA’NE’SWARA.

## LXXXIX.

MENU:—SHE must always live with a cheerful temper, with good management in the affairs of the house, with great care of the household furniture, and with a frugal hand in all her expenses.

## XC.

VRĪHASPATI:—RISING early, reverence to venerable persons, preparation

preparation of food and condiments, the lowest seat and bed; such is declared to be the proper conduct of women.

“ PREPARATION of food and condiments ;” the dressing of victuals and the like.

### XCi.

DE'VALA :—DEPENDENCE, attendance on her husband, aid in his religious ceremonies, respectful behaviour to those who are entitled to veneration from him, hatred to those who bear enmity to him, no ill will towards him, constant complacency, attention to his business, are the duties of women.

“ AID in his religious ceremonies ;” attendance on her lord when the sacrificial fire is supplied, when offerings are made, and so forth. Respectful behaviour to his father and others entitled to veneration and respect from him. “ Hatred to those who bear enmity to him ;” *for* no benefit should be conferred by a woman on those, who injure her husband, even though they soothe her with praise. “ No ill will towards him ;” no thoughts injurious to her husband. “ Attention to his business ;” industry in business which concerns her husband.

### XCII.

VISHNU, after premising “ duties of women :” — ACCOMPANYING of her husband, reverence of his father, of spiritual parents, of deities and guests, great cleanliness in regard to the domestick furniture and care of the household vessels, avoiding the use of philters and charms, attention to auspicious customs, austerities after the death of her husband, no frequenting of strange houses, no standing at the door or window, dependence in all affairs, subjection to her father, husband and son, in childhood, youth and age ; *such are the duties of a woman.*

" ACCOMPANYING of her husband ;" going wherever her husband goes, but to no place unauthorized by him : or it may be read, attending him at his religious ceremonies. " Use of philters and charms ;" subduing by incantations and drugs. " Standing at the door and window," to gaze at her husband's countenance : or " not standing at the door and window," lest her husband should entertain suspicions of her holding commerce with other men.

## XIII.

The *Mahābhārata* :—SHOULD her husband discover a woman to be wholly addicted to charms and philters, let him shun her, as he would a serpent which had crept into his house.

## XCIV.

Speech of the goddesses of abundance to the goddesses of the earth, quoted in the *Retnācara* : \* — " WITH women ever pure and adorned, faithful to their lords, speaking kindly, not lavish, blessed with progeny, careful of the household goods, attentive to religious worship,

2. " Whose houses are neat, whose senses are subdued, who avoid strife, who are not avaricious, who respect their duty, who are endued with tenderness, I am ever present, O thou supporter of worlds !"

" ATTENTIVE to religious worship," attentive to the business of providing oblations for the worship of deities and for other sacraments. " Who avoid strife" or contention. " Who are not avaricious ;" who are not covetous.

## XCV.

SANC'HIA & LIC'HITA :—FOR every succeeding day let the wife clean the vessels used at meals ; let her sweep the dwelling house and gate, and, when clean, preserve it so ;

\* From VISNUV, if the citation in the *Retnācara* be correct.